INTRODUCTORY NOTE TO PROSECUTOR V. CHARLES GHANKAY TAYLOR (SCSL)

BY ERIN LOUISE PALMER*

[September 26, 2013]
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Introduction

On September 26, 2013, the Appeals Chamber for the Special Court for Sierra Leone (Special Court) unanimously upheld the Trial Chamber's conviction of Charles Ghankay Taylor, the former President of Liberia, and affirmed his fifty-year sentence for aiding and abetting rebel forces in Sierra Leone that perpetrated brutal crimes during the civil war in Sierra Leone.[1] The Appeals Chamber's judgment followed an almost four-year trial that included testimony from 115 witnesses, including Taylor himself—who testified in his defense for seven months—and celebrities such as British model Naomi Campbell and U.S. actress Mia Farrow, who the Prosecution called to show that Taylor knowingly handled blood diamonds.[2] Taylor is the first head of state that an international or hybrid tribunal has convicted since the Nuremberg trials.

Background

The Prosecution indicted Taylor in June 2003 and later amended the indictment in May 2007, charging him with: (1) crimes against humanity, including murder, rape, sexual slavery, other inhumane acts, and enslavement; (2) war crimes (i.e., violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II), including acts of terrorism, murder, cruel treatment, personal dignity crimes, and pillage; and (3) other serious violations of international humanitarian law, namely, the conscription or enlistment of child soldiers.[3] The Prosecution alleged that Taylor was individually responsible for these crimes based on four theories of liability: (1) that he planned, instigated, ordered, or committed the crimes; (2) that he aided and abetted the planning, preparation, or execution of the crimes; (3) that he participated in a common plan, design, or purpose to effectuate the crimes; and (4) that he exercised command and control over the rebels and knew or should have known that his subordinates committed the crimes, and that he failed to take necessary and reasonable measures to prevent these crimes or punish the perpetrators.[4]

The Trial Chamber took just over nine years to convict and sentence Taylor.[5] Part of the delay stemmed from Taylor's initial boycott of the trial and decision to fire his defense counsel and represent himself. When the Prosecution began its case in June 2007, Taylor had a new Defense team (with highly-regarded British barrister Courtenay Griffiths as his lead defense counsel). The Prosecution closed its case almost two years later in February 2009, having presented testimony from ninety-one witnesses.[6] The Defense began its case in July 2009 and concluded its case in November 2010, having presented testimony from twenty-one witnesses, including Taylor himself.

On April 26, 2012, the Trial Chamber delivered its final judgment.[7] It found Taylor criminally responsible for planning—but not ordering or instigating—the crimes committed, as well as for aiding and abetting the commission of the crimes.[8] The Trial Chamber found that the evidence did not establish that Taylor either exercised effective command and control over the rebels or that he participated in a common plan to perpetrate the crimes.[9] On May 30, 2012, the Trial Chamber sentenced Taylor to fifty years in prison and, in doing so, rejected a number of mitigating factors that the Defense presented as a result of "Mr. Taylor's betrayal of the public trust."[10]

Both the Prosecution and the Defense appealed various aspects of the Trial Chamber's judgment and sentence.[11] Specifically, the Prosecution argued that the Trial Chamber erred in failing to find Taylor individually criminally responsible for ordering and instigating the crimes at issue.[12] The Prosecution sought a reversal of the Trial Chamber's finding that crimes committed in certain areas fell outside the scope of the indictment.[13] In addition, the Prosecution sought to increase Taylor's sentence to eighty years based on the Trial Chamber's failure "to give sufficient weight to its own findings of Mr. Taylor's continuing critical role in the broader, ongoing campaign of atrocities against the people of Sierra Leone."[14]

The Defense raised forty-two grounds of appeal, arguing that the Trial Chamber substantially erred in its evaluation of the evidence and application of the law, requiring that the Trial Chamber reverse Taylor's conviction and vacate his fifty-year prison sentence.[15] The Defense argued that the Trial Chamber incorrectly required for purposes of

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aiding and abetting liability that Taylor have knowledge that his conduct would aid the rebel forces in the commission of their crimes, as opposed to requiring the higher standard under which Taylor would have to act with a purpose to further the rebel forces' criminal conduct.[16] According to the Defense, these evidentiary and legal errors rendered Taylor's fifty-year sentence "manifestly unreasonable."[17]

The Appeals Chamber Judgment

With minor exceptions, the Appeals Chamber affirmed the Trial Chamber's ruling, concluding that the Trial Chamber's findings of fact were reasonable "in light of the Trial Chamber's careful and cautious approach to the evaluation of the evidence" and that it had properly applied the standard of proof, finding Taylor guilty beyond a reasonable doubt.[18] Importantly, the Appeals Chamber rejected the Defense's argument that aiding and abetting liability requires an individual to act with a purpose to further the underlying crime, as opposed to the lesser standard of acting with knowledge of the underlying crime.[19] In upholding the Trial Chamber's application of the knowledge standard for aiding and abetting liability, the Appeals Chamber declined to follow the decision of the International Criminal Tribunal for the former Yugoslavia (ICTY) in *Prosecutor v. Momčilo Perišić*. In that case, the ICTY found that aiding and abetting liability requires actions that are "specifically directed" toward the commission of the underlying crime.[20] The Appeals Chamber thus upheld Taylor's fifty-year prison sentence as "fair and reasonable in light of the totality of the circumstances."[21]

Conclusion

Charles Ghankay Taylor is one of many individuals the Special Court has tried and convicted since opening its doors twelve year ago. As the Special Court has completed its mandate to try those individuals who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996, the government of Sierra Leone and the United Nations formally closed the Special Court on December 3, 2013.[22]

More than ten years after Taylor was first indicted, victims of human rights abuses committed in Sierra Leone during Taylor's tenure may feel some sense of justice now that Taylor faces a fifty-year sentence in a prison in the United Kingdom.[23] In addition, these victims are now free to seek reparations in the Sierra Leonean courts. But, the victims' ability to seek reparations is complicated in light of Taylor's claims that he is "partially indigent" and the likely difficulties locating his assets,[24] making any claim that justice has been served disputable.

ENDNOTES

1 Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Judgment (Sept. 26, 2013) [hereinafter Judgment], http://www.sc-sl.org/LinkClick.aspx?fileticket=t14fjFP4jJ8%3d&tabid=107.

2 Marlise Simons & J. David Goodman, *Ex-Liberian Leader Gets 50 Years for War Crimes*, N.Y. TIMES (May 30, 2012), http://www.nytimes.com/2012/05/31/world/africa/charles-taylor-sentenced-to-50-years-for-war-crimes.html.

3 Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Second Amended Indictment (May 29, 2007), http://www.sc-sl.org/LinkClick.aspx?fileticket=lrn0bAAMvYM%3d&tabid=107.

4 *Id.* at 9.

5 THE SPECIAL COURT FOR SIERRA LEONE, THE PROSECUTOR VS. CHARLES GHANKAY TAYLOR (2014), http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx.

6 The Prosecution later reopened its case to present three additional witnesses.

7 *See* Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-1-T, Judgement Summary (Apr. 26, 2011) [hereinafter Judgement Summary], http://www.sc-sl.org/LinkClick.aspx?fileticket=86r0nQUtK08=; Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-1-T, Judgement (May 18, 2012), http://www.sc-sl.org/LinkClick.aspx?fileticket=k%2b03KREEPCQ%3d&tabid=107.

8 Judgement Summary, *supra* note 7, at 35-40, 42-43.

9 *Id.* at 34-35.

10 Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Sentencing Judgement, 39-40 (May 30, 2012), http://www.sc-sl.org/LinkClick.aspx?fileticket=U6xCITNg4tY%3d&tabid=107.

11 Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Prosecution's Notice of Appeal (July 19, 2012), http://www.sc-sl.org/LinkClick.aspx?fileticket=SW1ZhnY1yvM%3d&tabid=107; Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Notice of Appeal of Charles Ghankay Taylor

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(July 19, 2012), http://www.sc-sl.org/LinkClick.aspx?fileticket=eXdZQ%2bQcRos%3d&tabid=107.

12 Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Public Prosecution Appellant's Submissions, 6-44 (Oct. 1, 2012), http://www.sc-sl.org/LinkClick.aspx?fileticket=RKV2Z8dIRLI%3d&tabid=107.

13 *Id.* at 45-81.

14 *Id.* at 85.

15 *See generally* Press Release, Special Court for Sierra Leone, Charles Taylor Appeal Judgement Scheduled for 26 September 2013 (Aug. 27, 2013), http://www.sc-sl.org/LinkClick.aspx?fileticket=1nGfGDPkd8s%3D&tabid=235.

16 Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Appellant's Submissions of Charles Ghankay Taylor, 95-99 (Oct. 1, 2012), http://www.sc-sl.org/LinkClick.aspx?fileticket=R5js%2fPiBejc%3d&tabid=107.

17 Press Release, *supra* note 15.

18 Press Release, Special Court for Sierra Leone, Appeals Chamber Upholds Charles Taylor's Conviction, 50 Year Sentence (Sept. 26, 2013), http://www.sc-sl.org/LinkClick.aspx?fileticket=gEJ2L%2b5%2frBo%3d&tabid=235.

19 Judgment, *supra* note 1, at 213-19.

20 Prosecutor v. Momčilo Perišić, Case No. IT-04-81-A, Judgement, 28-29 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 28, 2013), http://www.icty.org/x/cases/perisic/acjug/en/130228_judgement.pdf.

21 Judgment, *supra* note 1, at 303-04.

22 Press Release, Special Court for Sierra Leone, Government of Sierra Leone Hosts Closing Ceremony for the Special Court (Dec. 3, 2013), http://www.sc-sl.org/LinkClick.aspx?fileticket=4mOKc8GexYk%3D&tabid=235.

23 *Liberian Charles Taylor Moved to British Prison to Serve War Crimes Conviction*, THE TELEGRAPH (Oct. 15, 2013), http://www.telegraph.co.uk/news/worldnews/africaandindianocean/liberia/10380401/Liberian-Charles-Taylor-moved-to-British-prison-to-serve-war-crimes-conviction.html.

24 Marlise Simons & Alan Cowell, *50-Year Sentence Upheld for Ex-President of Liberia*, N.Y. TIMES (Sept. 26, 2013), http://www.nytimes.com/2013/09/27/world/africa/charles-taylor-sierra-leone-war-crimes-case.html?[lowem]r=0.

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PROSECUTOR V. CHARLES GHANKAY TAYLOR (SCSL)*
[September 26, 2013]
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SPECIAL COURT FOR SIERRA LEONE

IN THE APPEALS CHAMBER

Before:	**Justice George Gelaga King, Presiding** **Justice Emmanuel Ayoola** **Justice Renate Winter** **Justice Jon M. Kamanda** **Justice Shireen Avis Fisher** **Justice Philip Nyamu Waki, Alternate Judge**
Registrar:	**Ms. Binta Mansaray**
Date:	**26 September 2013**
PROSECUTOR	**Against** CHARLES GHANKAY TAYLOR (Case No. SCSL-03-01-A)

JUDGMENT

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Mr. Mohamed A. Bangura
Ms. Nina Tavakoli
Ms. Leigh Lawrie
Mr. Christopher Santora
Ms. Kathryu Howarth
Ms. Ruth Mary Hackler
Ms. Ula Nathai-Lutchman
Mr. James Pace
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The **APPEALS CHAMBER** of the Special Court for Sierra Leone, comprised of Hon. Justice George Gelaga King, Presiding, Hon. Justice Emmanuel Ayoola, Hon. Justice Renate Winter, Hon. Justice Jon Moadeh Kamanda and Hon. Justice Shireen Avis Fisher;

SEIZED OF appeals from the Judgment rendered by Trial Chamber II on 18 May 2012, as revised by the Corrigendum issued on 30 May 2012, and the Sentencing Judgment of 30 May 2012, in the case of *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-T;

HAVING CONSIDERED the written and oral submissions of the Parties and the Record on

Appeal;

HEREBY RENDERS its Judgment.

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I. INTRODUCTION

A. The Special Court for Sierra Leone

1. The United Nations Security Council adopted Resolution 1315, of 14 August 2000, expressing its deep concern "at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity"; and requesting the Secretary-General of the UN to negotiate an agreement with the Government of Sierra Leone to establish an independent special court to prosecute persons who bear the greatest responsibility for the commission of serious violations of international humanitarian law and crimes committed under Sierra Leonean law.[1]

2. Pursuant to the resolution, the SCSL was established in 2002 by an Agreement between the UN and the Government of Sierra Leone with the mandate to prosecute those persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, and to function in accordance with the Statute of the SCSL annexed to the Agreement as an integral part thereof.

3. The Statute of the SCSL empowers the Court to prosecute persons who committed crimes against humanity, serious violations of Article 3 Common to the 1949 Geneva Conventions for the Protection of War Victims and of Additional Protocol II, other serious violations of international humanitarian law and specified crimes under Sierra Leonean law.[2]

B. The Indictment against Charles Ghankay Taylor

4. Taylor was born on 28 January 1948 in Arthington in the Republic of Liberia.[3] He graduated with an associate degree in accounting in 1974 from Chamberlayne Junior College in Boston, Massachusetts in the United States of America, and with a Bachelor of Science degree in economics in 1976 from Bentley College in Waltham, Massachusetts in the United States of America.[4] In 1986, he formed an armed group, the NPFL, in opposition to President Samuel Doe of Liberia.[5] In 1989, he led his forces into Liberia and remained the leader of the NPFL throughout the Liberian Civil War.[6] Taylor was elected President of Liberia on 2 August 1997.[7] On 7 March 2003, an indictment against Taylor was confirmed by the SCSL, and a Warrant of Arrest was issued, requesting all States to assist in Taylor's arrest and transfer to the SCSL.[8] On 12 June 2003, the Indictment and Warrant of Arrest were formally unsealed.[9] Taylor stepped down from the Presidency of Liberia on 11 August 2003.[10] He went into exile in Nigeria and remained there until he was arrested by the Nigerian authorities on 29 March 2006 and transferred into the custody of the SCSL on the same day.[11]

5. The Indictment, subsequently twice amended, first on 16 March 2006,[12] and again on 29 May 2007,[13] charged Taylor with eleven counts. In five counts he was charged with crimes against humanity, punishable under Article 2 of the Statute, namely: murder (Count 2); rape (Count 4); sexual slavery (Count 5); other inhumane acts (Count 8); and enslavement (Count 10). Five other counts charged violations of Common Article 3 and Additional Protocol II, punishable under Article 3 of the Statute, namely: acts of terrorism (Count 1); violence to life, health and physical or mental well-being of persons, in particular murder (Count 3); outrages upon personal dignity (Count 6); violence to life, health and physical or mental well-being of persons, in particular cruel treatment (Count 7); and pillage (Count 11). One count charged other serious violations of international humanitarian law, punishable under Article 4 of the Statute, namely conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 9).

6. The Indictment alleged that the crimes underlying the charged counts were committed between 30 November 1996 and 18 January 2002 ("Indictment Period") in named locations in six districts of Sierra Leone—Bombali, Kailahun, Kenema, Kono, Port Loko and Freetown and the Western Area—during five time periods:

(i) Between 30 November 1996 and 24 May 1997, crimes charged in Counts 1, 4–8 and 10 were committed in Kailahun.

(ii) Between 25 May 1997 and 31 January 1998, crimes charged in Counts 1–8 and 10 were committed in Kailahun, Kenema and Kono.

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(iii) Between 1 Febuary 1998 and 31 December 1998, crimes charged in Counts 1–8, 10 and 11 were committed in Bombali, Kailahun, Kenema, Port Loko and Freetown and the Western Area.

(iv) Between 1 January 1999 and 28 February 1999, crimes charged in Counts 1–8, 10 and 11 were committed in Kailahun, Kono and Freetown and the Western Area.

(v) Between 1 March 1999 and 18 January 2002, crimes charged in Counts 1–8 and 10 were committed in Kailahun and Kono.

7. In Count 9 (child soldiers), it was alleged that throughout the Indictment Period, boys and girls under the age of 15 were routinely conscripted, enlisted and/or used to participate in active hostilities throughout the territory of Sierra Leone.

8. In Count 1 (acts of terrorism), it was alleged that throughout the Indictment Period, the crimes charged in Counts 2–11 and the burning of civilian property were committed as part of a campaign to terrorise the civilian population of Sierra Leone.

9. The Indictment charged Taylor with individual criminal responsibility pursuant to Articles 6(1) and 6(3) of the Statute. Pursuant to Article 6(1), the Indictment alleged that Taylor, by his acts or omissions, planned, instigated, ordered, committed, aided and abetted or participated in a common plan involving the crimes charged in Counts 1–11. In addition or in the alternative, pursuant to Article 6(3), the Indictment alleged that Taylor was responsible as a superior for the crimes charged in Counts 1–11.

10. Taylor pleaded not guilty to all counts in the Indictment.[14]

C. The Trial Judgment

1. The Trial

11. The trial commenced on 4 June 2007. The Trial Chamber heard evidence on 420 trial days. In total, 115 witnesses testified *viva voce* and 1521 exhibits were admitted in evidence. The trial record includes 49,622 pages of transcripts and 1279 filings and decisions.

2. The Judgment and Sentence

12. In its Judgment pronounced on 26 April 2012, the Trial Chamber found that at all times relevant to the Indictment, there was an armed conflict in Sierra Leone involving, among others, members of the RUF, AFRC and CDF,[15] and that the RUF/AFRC directed a widespread and systematic attack against the Sierra Leonean civilian population.[16]

13. The Trial Chamber convicted Taylor on all eleven counts of the Indictment and found him individually criminally liable under Article 6(1) of the Statute for aiding and abetting the commission of crimes, charged in all eleven counts, between 30 November 1996 and 18 January 2002 in the Districts of Bombali, Kailahun, Kenema, Kono, Port Loko and Freetown and the Western Area.[17] It further found Taylor individually criminally liable under Article 6(1) of the Statute for planning the commission of crimes, charged in all eleven counts, between December 1998 and February 1999 in the Districts of Bombali, Kailahun, Kono, Port Loko and Freetown and the Western Area and that were committed in the attacks on Kono and Makeni in December 1998, and in the invasion of and retreat from Freetown, between December 1998 and February 1999.[18] The Trial Chamber found that the Prosecution failed to prove beyond a reasonable doubt that Taylor was criminally liable under Article 6(3) of the Statute.[19]

14. On 30 May 2012, the Trial Chamber sentenced Taylor to a single term of imprisonment of 50 years.[20]

D. The Appeals

15. The Defence and the Prosecution filed Notices of Appeal on 19 July 2012.[21] The Defence raised 45 Grounds of Appeal, and the Prosecution four Grounds. The Defence subsequently withdrew its Ground 35.[22]

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16. The Defence, by its Notice of Appeal, challenges the Trial Chamber's Judgment under six principal headings,[23] three of which, in substance, relate to the merits of the case. Under those headings, the Defence complains that there are: "Systematic Errors in the Evaluation of Evidence";[24] "Errors which Invalidate the Planning Convictions" generally and, in particular, in respect of the *actus reus* and *mens rea* of planning;[25] and "Errors which Invalidate the Aiding and Abetting Convictions" in regard to the *actus reus* and *mens rea* of aiding and abetting.[26] The remaining three principal headings relate to what the Defence describes as "Irregularities in the Judicial Process";[27] "Errors Undermining the Fairness of the Proceedings";[28] and "Miscellaneous."[29] The six principal headings are argued in 41 Grounds of Appeal in the Taylor Appeal Brief. In addition to the Grounds of Appeal which relate to the convictions, the Defence in relation to the sentence raised four other Grounds of Appeal challenging Taylor's sentence.[30]

17. First, the Defence challenges the Trial Chamber's assessment of the evidence and its findings of fact in parts of 22 Grounds of Appeal.[31]

18. Second, in Ground 17, the Defence argues that the Trial Chamber erred in law and in fact in finding that the RUF/AFRC had an operational strategy to commit crimes against the civilian population of Sierra Leone throughout the Indictment Period.[32]

19. Third, in Grounds 11, 16, 19, 21 and 34, the Defence challenges the Trial Chamber's legal findings on the elements of aiding and abetting and planning liability.[33]

20. Fourth, the Defence challenges the conclusion that Taylor's acts and mental state, as found by the Trial Chamber, establish his individual criminal responsibility for aiding and abetting and planning the commission of crimes charged. For the planning convictions, the Defence challenges the Trial Chamber's conclusion as to Taylor's *actus reus* in Grounds 10, 11 and 13, and challenges the Trial Chamber's *mens rea* findings in Grounds 14 and 15.[34] For the aiding and abetting convictions, the Defence challenges the Trial Chamber's conclusion that Taylor had the requisite *mens rea* in Grounds 17–20, and challenges the Trial Chamber's conclusions as to Taylor's *actus reus* in Grounds 22–33.

21. Fifth, in Grounds 36–39, the Defence contends that there were irregularities in the judicial process constituting violations of Taylor's right to a fair and public trial.[35]

22. Sixth, in Grounds 41–45, the Defence argues that the Trial Chamber erred in entering cumulative convictions and challenges the sentence imposed by the Trial Chamber.[36]

23. The Prosecution makes four complaints in its Grounds of Appeal. It claims in its first two Grounds that the Trial Chamber made errors of law and fact in that it failed to find that, in addition to aiding and abetting and planning crimes, Taylor also ordered and instigated the commission of crimes.[37] In its third Ground, the Prosecution alleges that the Trial Chamber erred in finding in the Trial Judgment that the locations of some crimes, for which evidence was led, were not pleaded in the Indictment.[38] In its fourth Ground, the Prosecution complains about the inadequacy of the sentence imposed by the Trial Chamber.[39]

II. STANDARD OF REVIEW ON APPEAL

24. Article 20 of the Statute and Rule 106 state the three grounds on which the Appeals Chamber shall hear appeals from persons convicted by the Trial Chamber or from the Prosecutor: a procedural error, an error on a question on law invalidating the decision and an error of fact which has occasioned a miscarriage of justice.

25. It is incumbent on an appellant alleging an error of law to give particulars of the alleged error and state with precision how the error invalidates the decision.[40] Alleged errors of law that have no chance of affecting the outcome of the decision would be considered only in exceptional circumstances.[41] An appellant claiming an error of law on the basis of lack of a reasoned opinion must identify the specific issues, factual findings or arguments which the appellant submits the Trial Chamber omitted to address and explain why this omission invalidated the decision.[42]

26. A Trial Chamber's findings of fact will not be lightly overturned,[43] as the Trial Chamber is best placed to assess the evidence received at trial.[44] It is now well established in several cases that:

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> [T]he task of hearing, assessing, and weighing the evidence presented at trial is left primarily to the Trial Chamber. Thus, the Appeals Chamber must give a margin of deference to a finding of fact reached by a Trial Chamber. Only where the evidence relied on by the Trial Chamber could not have been accepted by any reasonable tribunal of fact or where the evaluation of evidence is "wholly erroneous" may the Appeals Chamber substitute its own finding for that of the Trial Chamber.[45]

Accordingly, the Appeals Chamber would apply, where appropriate, a test of reasonableness to the findings in considering the alleged errors of fact[46] since the Trial Chamber's factual findings will only be disturbed where no reasonable trier of fact could have reached the same finding. The same reasonableness test would be applied to a finding of fact reached by a Trial Chamber regardless of whether the finding of fact was based on direct or circumstantial evidence[47] or which party challenges the finding of fact.[48] A Trial Chamber's factual findings will also be overturned where the finding is wholly erroneous.[49]

27. An appellant alleging an error of fact must provide details of the alleged error and state with precision how the error of fact occasioned a miscarriage of justice.[50] A miscarriage of justice is "a grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential element of the crime."[51] For an error to be one that occasioned a miscarriage of justice, it must have been critical to the verdict reached.[52]

28. Appellate review of alleged procedural errors is limited to those procedural errors which occasioned a miscarriage of justice vitiating the proceedings and affecting the fairness of the trial.[53] Procedural errors that could be waived or ignored as immaterial or inconsequential, without injustice or prejudice to the parties, are not procedural errors occasioning a miscarriage of justice.[54]

29. Appellate review of the Trial Chamber's exercise of discretion is very limited. Even if the Appeals Chamber does not agree with the impugned decision, the decision will stand unless it was so unreasonable as to lead to the conclusion that the Trial Chamber failed to exercise its discretion judiciously.[55] An exercise of discretion will only be disturbed if the Trial Chamber made a discernible error by misdirecting itself as to the legal principle or law to be applied, taking into consideration irrelevant factors, failing to consider or give sufficient weight to relevant factors, or making an error as to the facts upon which it has exercised its discretion.[56]

30. Appeals against the sentence, like appeals from a judgment of a Trial Chamber, are appeals *stricto sensu* and not trials *de novo*.[57] Trial Chambers are vested with a broad discretion in determining an appropriate sentence in keeping with their obligation to individualise the penalties to fit the individual circumstances of the accused and the gravity of the crime.[58] As a general rule, the Appeals Chamber will not revise a sentence unless the Trial Chamber has committed a "discernible error" in exercising its discretion or has failed to follow the applicable law.[59]

31. The Appeals Chamber is entitled to dismiss summarily any of the parties' submissions that do not merit a reasoned opinion in writing, or those which are evidently unfounded or fail to comply with applicable regulations or practice directions.[60]

III. THE INDICTMENT

32. In its Ground 3, the Prosecution complains that "the Trial Chamber erred in law and in fact by failing to convict Charles Taylor for crimes committed in certain locations in five districts on the ground that they fell outside the scope of the Indictment."[61]

A. The Trial Chamber's Findings

33. In the Trial Judgment, the Trial Chamber considered the sufficiency of the pleading of locations in the Indictment relating to[62] crimes committed in five particular specified districts,[63] crimes committed in Freetown and the Western Area and crimes of a continuous nature.[64] It held that the crimes committed in Freetown and the Western Area and crimes of a continuous nature had been adequately pleaded.[65]

34. With respect to crimes committed in the five specified districts, the Trial Chamber rejected the Prosecution submission that even where a location was not specifically pleaded in the Indictment, the pleading of locations using inclusive language such as "various locations" in a district and "throughout" a district was sufficient.[66] It concluded

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that an accused is entitled to know the case against him and entitled to assume that any list of alleged acts contained in an indictment is exhaustive, whether or not the indictment uses inclusive words that imply that unidentified crimes are also being charged.[67] It recalled its decision in the *Brima et al.* Trial Judgment, which was upheld on appeal.[68]

35. In its findings on the alleged crimes, the Trial Chamber identified those crimes that were defectively pleaded and reiterated that the evidence relating to those crimes would not be considered for proof of guilt, but only in relation to the *chapeau* elements and context.[69]

B. Submissions of the Parties

36. The Prosecution submits that the Trial Chamber erred in finding that the pleading of locations using inclusive language such as "various locations" in a district and "throughout" a district failed to plead a sufficiently specific location.[70] It contends that the Trial Chamber erred in law by failing to follow the *ratio decidendi* of the *Sesay et al.* Appeal Judgment, where the Appeals Chamber held that in light of the sheer scale of the crimes and the fact that the accused was not charged with personal commission, a non-exhaustive list of locations was sufficiently specific.[71] The Prosecution argues that in this case, in light of the widespread nature and sheer scale of the alleged crimes, Taylor's remoteness from the crimes and the fact that Taylor was not charged with personal commission, non-exhaustive pleading was sufficient[72] and that pleading crimes "throughout" a district clearly and adequately informed Taylor that every location in the district was at issue and accurately described the pervasive and widespread nature of the crimes.[73]

37. In the alternative, the Prosecution contends that the Trial Chamber erred in law by failing to consider whether timely, clear and consistent notice of the locations was given to Taylor by other communications and, thus, cured any defects in the Indictment.[74] Finally, it contends that, even if the Indictment was defective, Taylor was not prejudiced in his ability to prepare his defence,[75] and as a result, any defects found by the Trial Chamber should have been deemed harmless.[76]

38. The Defence responds that the Trial Chamber's finding was correct and fully in accordance with the applicable jurisprudence.[77] It argues that the Prosecution is always required to give all the particulars it is able to give in the indictment,[78] and notes that the Prosecution is expected to know its case before going to trial and cannot mould its case during the trial depending on the evidence it adduces.[79] It submits that in accordance with the *Sesay et al.* Appeal Judgment, the sheer scale doctrine is a narrow, case-by-case exception to the specificity requirement.[80] It further argues that the facts in the *Sesay et al.* Appeal Judgment can be distinguished from the facts here,[81] and that the Trial Chamber did not err in failing to apply the narrow sheer scale exception.[82] The Defence submits further that the Trial Chamber's approach is in accordance with the Appeals Chamber's decision in the *Brima et al.* Appeal Judgment and the wide discretion a Trial Chamber has in these matters.[83] Finally, the Defence submits that the Prosecution did not cure the defects through other communications.[84]

39. In its Reply the Prosecution argues that: its pleading limited its case to crimes committed within the districts and time periods pleaded;[85] the Trial Chamber was bound to follow the Appeals Chamber's decision in *Sesay et al*. rather than the opinion in *Brima et al.*, and that the Defence fails to distinguish the instant case on relevant grounds;[86] and, finally, that during trial, Taylor never alleged any prejudice to his ability to defend himself.[87]

C. Discussion

40. Contrary to the Prosecution submission,[88] the Appeals Chamber's holding in *Sesay et al.* is consistent with its holding in *Brima et al*.[89] The non-specific and inclusive pleading of locations—through the use of words such as "throughout" a district or "in various locations, including"[90]—*may be adequate* in light of the "sheer scale" of the alleged crimes.[91] Equally, such pleading of locations *may be defective*.[92] It is for the Trial Chamber to determine in each case whether non-specific and inclusive pleading of locations is sufficient to provide sufficient notice to the accused to enable him to prepare a defence, both generally and within the narrow "sheer scale" exception.[93] In making this determination, it must take into account the fair trial rights of the accused,[94] the Prosecution's obligation to plead clearly the material facts it intends to prove,[95] the particulars of the case[96] and the interests of justice.[97] The Appeals Chamber is satisfied that in this case the Trial Chamber properly considered whether locations were pleaded with the requisite specificity.[98]

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41. The Prosecution further fails to establish that the Trial Chamber improperly concluded that the locations at issue were *defectively* pleaded. Even where it is impracticable or impossible to specifically plead all material facts, the Prosecution must still put forward its best understanding of the case in the indictment, based on the information in its possession.[99] It must know its case before it proceeds to trial; it cannot omit material aspects of its allegations that are known to it; and it cannot develop its case as the evidence unfolds.[100] It is not part of the Prosecution's case in this appeal that it could not have provided further specificity in the Indictment, particularly as Taylor was re-arraigned on 3 July 2007, after the Trial Judgment in *Brima et al*. was published on 20 June 2007 and long after the Prosecution closed its case in *Sesay et al.* on 2 August 2006.[101] The Prosecution was, presumably, aware what evidence its witnesses would give, as a number of Prosecution witnesses in the instant case also testified in the *Brima et al.* trial and the *Sesay et al.* trial in respect of the same events.

42. For the reasons given, the Appeals Chamber comes to the conclusion that the Trial Chamber did not err in law in finding that the non-specific and inclusive pleading of locations in the Indictment was defective.

43. The Prosecution, however, contends in the alternative that, even if the Indictment was defective, the Trial Chamber erred in law by failing to consider whether the defect was cured by other forms of timely, clear and consistent notice to Taylor of the unspecified locations.[102]

44. It needs to be emphasised that the indictment is the primary accusatory instrument.[103] It is, therefore, incumbent on the Prosecution to plead in the indictment with such specificity[104] as would satisfy the accused's right to be informed of the nature and cause of the charges against him and afford him adequate time and facilities for the preparation of his defence.[105] The Appeals Chamber opines that even though a Trial Chamber may, in the interest of justice and consistent with the rights of the accused, consider whether a defective pleading was cured by the provision of timely, clear and consistent information detailing the factual basis underpinning the charges,[106] the Prosecution may not rely on a defective pleading in the expectation that it will be subsequently rectified by the Trial Chamber. Besides, the Trial Chamber is not obliged to find a cure for a defective indictment.[107] For these reasons, the Appeals Chamber finds this argument misdirected and rejects it.

D. Conclusion

45. Accordingly, Prosecution Ground 3 is dismissed in its entirety.

IV. THE EVALUATION OF EVIDENCE

A. Introduction

46. In Section I of the Notice of Appeal, the Defence has assembled a cluster of Grounds of Appeal; apparently intended to particularise what it described as "Systematic Errors in the Evaluation of Evidence that amount to Errors of Law."[108]

47. Under this heading, the Defence complains in Grounds 1, 2, and 3, respectively, that the Trial Chamber relied on uncorroborated hearsay evidence as the basis for specific findings of fact; failed to assess the reliability of the sources of hearsay evidence; and adopted an approach to credibility of witnesses that was erroneous in law. Though not exactly of the same character as the previous three, the Defence adds in Grounds 4, 5 and 40, respectively, complaints that the Trial Chamber, in error of law, "pervasively and systematically" reversed the burden of proof on the Prosecution; that it "disregarded the principle that substantial payments to witnesses, in itself, requires that their testimony be treated with caution"; and that it failed to find that payments "went beyond that which is reasonably required for the management of a witness."

48. A slightly different type of challenge is made in Ground 6, in respect of which the substance of the Defence case concerns the procedure whereby the Trial Chamber determined that the presumption of accuracy attending a previously-admitted adjudicated fact had been rebutted.[109]

49. On the basis of these general challenges, the Defence proceeds to make further challenges to individual findings of fact made by the Trial Chamber, particularly in regard to Taylor's acts and conduct.[110] In the process the Defence repeats the alleged systematic evidentiary errors discussed in Grounds 1–5 and 40.

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50. In sum, then, from the manner in which the Defence presents its case on this Appeal,[111] the Appeals Chamber considers that the Defence challenges the Trial Chamber's evaluation of the evidence in parts of 22 Grounds of Appeal,[112] the submissions in respect of which are hereafter described in this Judgment collectively as the "Evidentiary Submissions".

51. The Appeals Chamber considers that the Evidentiary Submissions present three categories of challenges to the Trial Chamber's factual findings: first, in regard to the Trial Chamber's articulation and general application of the law of evidence; second, in regard to the Trial Chamber's specific findings of fact based on the alleged systematic errors; and third, concerning other errors the Trial Chamber allegedly made in its evaluation of particular evidence.

1. Submissions of the Parties

52. The Defence raises two issues of law which the Special Court has not had occasion to discuss to any extent in any of its previous judgments: first, the nature of evidence that could be characterised as "corroboration"; and second, whether triers of fact are precluded by law from relying solely or decisively on uncorroborated hearsay evidence as the basis for "incriminating findings of fact."[113]

53. Building on its complaints of alleged "systematic errors in the evaluation of evidence" as outlined above, the Defence raises a number of challenges to the manner in which the Trial Chamber assessed evidence throughout the Trial Judgment. Thus, in eight Grounds of Appeal, the Defence challenges findings of fact related to Taylor's conviction for planning the commission of crimes.[114] In eight other Grounds of Appeal, it challenges findings of fact related to Taylor's conviction for aiding and abetting the commission of crimes.[115] In these challenges, the Defence argues that in light of the alleged systematic errors in the evaluation of the evidence and other errors in the evaluation of particular evidence, no reasonable trier of fact could have reached the same findings of fact as the Trial Chamber did.

54. The contention of the Defence in Ground 6, put shortly, is that "the Trial Chamber erred in fact and law in finding that the Prosecution had successfully challenged the truth of Adjudicated Fact 15 from the [*Brima et al.* Trial Judgment], thus requiring the Trial Chamber's re-consideration of the matters in question."[116] In five other Grounds it submits that the Trial Chamber did not fulfill its obligation to provide a fully reasoned opinion in regard to its evaluation of evidence.[117]

55. The Prosecution responds, generally, that the Trial Chamber did not err in its evaluation of the evidence. It submits that the Trial Chamber exhaustively assessed the evidence on the record, and that the Trial Chamber's comprehensive approach demonstrates that the Trial Chamber's findings of fact are "right in law" and within its discretion as the primary trier of fact.[118] It contends that the Defence's piecemeal approach to the evidence and the findings of fact does not show errors in the Trial Chamber's comprehensive approach and does not establish that the Trial Chamber erred in law or fact in its evaluation of the evidence.[119]

56. In response to Ground 1, the Prosecution argues that the Defence does not properly state the law regarding the weight that may be accorded to hearsay evidence and that "'corroboration' is not a term of art, but one of common sense."[120] It further argues that the Defence "often mischaracterises evidence as being uncorroborated when it was corroborated."[121] In response to Grounds 2–5 and 40, it submits that the Trial Chamber consistently assessed the reliability of oral evidence,[122] properly assessed the credibility of witnesses[123] and properly applied the burden of proof.[124]

57. In response to the Defence's challenges to individual findings of fact, the Prosecution submits that the Trial Chamber was reasonable in arriving at each of the challenged findings.[125] It argues that the Defence contentions are based on "a fragmented view of the facts"[126] and that the Defence takes an "unsupported fragmentary approach to the Trial Chamber's findings."[127] It contends that the Defence arguments "ignore the Trial Chamber's holistic approach based on the totality of the evidence in reaching its findings."[128]

58. In response to Ground 6, the Prosecution avers that the Defence fails to show that the Trial Chamber erred in law or fact in finding that the Prosecution had successfully challenged the truth of the admitted adjudicated fact.[129]

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59. Turning to the Evidentiary Submissions generally, the Prosecution observes that cross-referenced arguments made in other Grounds of Appeal are repeated across multiple Grounds of Appeal.[130] It submits that some of the Evidentiary Submissions fail to develop properly an issue on appeal, as references are "incomplete, inaccurate or misleading" and some submissions are mere repetitions of arguments at trial.[131] It contends that contrary to the standard of review on appeal, the Defence "seeks to impermissibly relitigate arguments made and rejected at trial and to substitute alternative interpretations of the evidence."[132]

2. The Appeals Chamber's Review

60. The Appeals Chamber notes that in 16 of the 22 Grounds of Appeal[133] in which the Evidentiary Submissions are put forward, there was nothing in the Notice of Appeal or in the wording of the title of the Ground that would suggest that there were multiple challenges in each Ground, including challenges to the Trial Chamber's evaluation of the evidence. In those 16 Grounds, the Defence makes disparate arguments, which include arguments that the Trial Chamber made errors of fact, errors of law and errors in the application of the law to the facts found,[134] in clear violation of this Court's Practice Direction on the Structure of Grounds of Appeal,[135] and those grounds could be dismissed summarily under that Practice Direction.[136]

61. The Appeals Chamber considers meritorious the Prosecution submissions[137] that the Defence cross-references arguments made in other Grounds of Appeal and repeats submissions across multiple Grounds of Appeal,[138] and that Grounds 20 and 33 clearly fail to comply with the Practice Direction,[139] since those Grounds present no separate arguments but rely exclusively on arguments presented in other grounds.

62. The Appeals Chamber holds that Grounds 20 and 33 are fundamentally flawed, as they are manifestly not in compliance with the Practice Direction, and in addition, they are vague and undeveloped. These two Grounds are summarily dismissed.

63. In regard to the other Grounds, however, in the interest of justice, and considering that the Defence has so intertwined its evidentiary arguments with the arguments in support of those Grounds, the Appeals Chamber will review each of the particular evidentiary challenges to individual findings, as well as those challenges to systematic evidentiary errors in Grounds 1–5 and 40 for which notice was properly given.

64. For the sake of clarity, in this Judgment each of the 16 Grounds[140] earlier mentioned is organised according to the substance of the evidentiary challenge asserted by the Defence. The Defence advances common challenges to the Trial Chamber's evaluation of oral evidence[141] in regard to: (i) the assessment of the credibility of witnesses; (ii) the evaluation of the reliability of hearsay evidence and inferences; and (iii) the determination of the weight to be attached to the evidence. The Appeals Chamber addresses challenges of the same character together.

65. The Appeals Chamber accepts the Defence submission[142] that where a Trial Chamber systematically erred in its understanding and application of the law of evidence, the Appeals Chamber will not accord deference to findings of fact invalidated by such legal errors.

66. The Prosecution submits generally[143] and specifically[144] that many of the Defence submissions fail to properly develop an issue on appeal and should for that reason be summarily dismissed. Even though there is some merit in the Prosecution submission,[145] in the interest of justice and for the sake of completeness, arguments that could be summarily dismissed are nonetheless addressed where they serve the purpose of making the rest of the submissions complete and intelligible.

67. In the consideration of the issues arising in this section of the Judgment, the Appeals Chamber first sets out General Considerations, and then addresses the Defence's challenges relating to (i) issues of law, (ii) the assessment of credibility, (iii) the assessment of reliability, (iv) other alleged errors in the evaluation of evidence and in application of the burden and standard of proof, (v) adjudicated facts and (vi) alleged failures to provide a reasoned opinion.

B. General Considerations

68. A Trial Chamber undertakes two principal mandatory functions regarding evidence: to determine whether or not to admit it, and, if admitted, to evaluate it.[146]

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69. The Rules of Procedure and Evidence of the Special Court contain, in Section 3, the rules of evidence that govern the proceedings before the Chamber. Specifically, Rule 89(A) provides that "[t]he rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence." However, Rule 89(B) also provides that: "In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which best favour a fair determination of the matters before it and are consonant with the spirit of the Statute and the general principles of law."

70. Rule 89(C) sets out an overarching rule of admission of evidence when it provides that: "A Chamber may admit any relevant evidence."[147] It is evident that Rule 89 is in consonance with the recognition that flexibility in admitting and evaluating evidence in trials for violations of international criminal law is justified by the *sui generis* nature of these trials.[148] The Defence has not challenged the provisions of Rule 89.

C. Alleged Errors of Law

1. Corroboration

(a) Submissions of the Parties

71. One of the major planks on which the Defence's case rests in this appeal is that the "conviction of Charles Taylor rests largely on hearsay evidence, often uncorroborated."[149] In support of this argument the Defence relies on diverse submissions, in one of which it submitted that "[t]he Chamber failed to recognize not only that it was required by law to approach hearsay with due caution, but that it is legally impermissible to base a particular conviction only on uncorroborated hearsay."[150] It is expedient to note that the main focus of this aspect of the Defence case is on the nature of the hearsay evidence qualified as "uncorroborated", rather than the meaning of "corroboration." That notwithstanding, the Defence makes submissions as if its case depends on corroboration simpliciter. It is in that context that the Defence submits that the definition of corroboration is a matter of law, that the Trial Chamber erred by failing to provide a legal definition of the word,[151] and further that the Trial Chamber repeatedly applied a concept of corroboration bearing no relation to its proper definition, thus applying an "over-broad definition of corroboration", which affected the Trial Chamber's analysis of witnesses whose testimony the Defence alleges required corroboration.[152]

72. The Prosecution argues that the Defence is incorrect when it states that the Trial Chamber erred by failing to define corroboration, as a Trial Chamber is not obliged to detail every legal principle in its judgement before applying it.[153] It also submits that corroboration is a matter of common sense, not technical definition.[154]

(b) Discussion

73. It is because the Defence argues that the Trial Chamber repeatedly applied a concept of corroboration that has no relation to the proper concept of corroboration that the Appeals Chamber will pause, albeit briefly, to discuss what the Defence termed a "notion of corroboration."[155] The Appeals Chamber considers it apt to note at the threshold that technical rules prescribing what constitutes corroboration, and rules requiring technical corroboration for certain classes of witnesses in order to establish their credibility, are an anachronism, abandoned by most domestic jurisdictions[156] and renounced by this and other international tribunals.[157]

74. The maxim "one witness is no witness"[158] has no place in the prosecution of war crimes and crimes against humanity. Since the post-Second World War cases, such as the *Werner Rohde* Case, it has been recognised that "common-law rules as to the necessity of corroborating accomplices amount only to a caution and not to a command."[159] In the *General Tomoyuki Yamashita* Case, the Commission reversed a ruling in which it had previously been unwilling to consider affidavits without corroboration by witnesses on any item in the Bills of Particulars,[160] and affirmed its prerogative of receiving and considering affidavits or depositions, if it chose to do so, "for whatever probative value the Commission believes they may have, without regard to the presentation of some partially corroborative oral testimony."[161]

75. The Appeals Chamber recalls that corroboration of witnesses and evidence is not a legal requirement in international criminal law.[162] In the *Tadić* Appeal Judgment, the ICTY Appeals Chamber decided that a conviction may be based on the testimony of a single witness on a material fact without the need for corroboration.[163] In that

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case, the evidentiary record was minimal: the appellant's conviction for two murders was based solely on the testimony of one witness,[164] and the reasonableness of the Trial Chamber's finding turned only on the Trial Chamber's assessment of the credibility and reliability of that single witness.[165] The Appeals Chamber affirmed the Trial Chamber's finding, holding that "[t]he task of hearing, assessing and weighing the evidence presented at trial is left to the Judges sitting in a Trial Chamber."[166] Similarly, the accused in *Furundžija* was convicted based on the evidence of only two witnesses, who largely provided separate testimony regarding separate events.[167]

76. In *Sesay et al.*, this Appeals Chamber held that "[a] Trial Chamber enjoys discretion to use uncorroborated evidence, to decide whether corroboration is necessary in the circumstances, and to rely on uncorroborated, but otherwise credible, witness testimony."[168] In *Brima et al.*, the Appeals Chamber held that if after evaluation of evidence of an accomplice the Trial Chamber comes to the conclusion that the witness is nonetheless credible and his evidence reliable, the Trial Chamber can rely on it solely to enter a conviction.[169] There is no bar to the Trial Chamber relying on a limited number of witnesses or even a single witness, provided it took into consideration all the evidence on the record.[170]

77. There is likewise no technical definition of the word "corroboration" in the jurisprudence of the Special Court.[171] The SCSL Trial Chambers and the Appeals Chamber have consistently relied on the plain meaning of "corroboration" as "evidentiary support."[172] There are no rules specifying the form or substance that such support must take.[173] The Appeals Chamber agrees with the opinion of the ICTR Appeals Chamber that "corroboration is simply one of many potential factors in the Trial Chamber's assessment of a witness's credibility."[174] It also agrees with the opinion held in several cases that a Trial Chamber "has the discretion to rely on uncorroborated, but otherwise credible, witness testimony."[175]

(c) Conclusion

78. The Appeals Chamber holds that corroboration of witnesses and evidence is not a mandatory legal requirement in international criminal law or in the jurisprudence of the Special Court. Corroboration is only one of many factors which the Trial Chamber rightly considers when assessing the credibility of witnesses and the reliability and weight to be accorded to evidence. The Appeals Chamber holds that the Trial Chamber correctly relied on the plain meaning of the term "corroboration," and that, contrary to the submission of the Defence, there was no need for it to provide a definition of the word "corroboration" or regard it as a technical concept.

2. Uncorroborated Hearsay Evidence

(a) Submissions of the Parties

79. The gravamen of the Defence case in this appeal is the issue of uncorroborated hearsay evidence. In this regard, the Defence argues that as a general principle of law, uncorroborated hearsay evidence cannot be the sole or decisive basis for "specific incriminating findings of fact." It contends that the Trial Chamber committed an error of law by relying solely or decisively on uncorroborated hearsay evidence for incriminating findings of fact.[176]

80. The Prosecution responds that it is not the law of the Special Court, or of the other international criminal tribunals, such as the ICTR or the ICTY, that a Trial Chamber cannot rely on uncorroborated hearsay evidence in convicting an accused.[177]

(b) Discussion

81. The Defence contends that "it is legally impermissible to base a particular conviction only on uncorroborated hearsay."[178] For this submission it relies on the ICTY Appeals Chamber *Prlić et al.* Decision Relating to Admitting Transcript, quoting a passage in the decision wherein that Appeals Chamber stated:

> A different matter is, of course, what weight a trier of fact is allowed to give to evidence not subjected to the testing of cross-examination. It is in this matter that the jurisprudence of the ECHR is valuable, as it has authoritatively stated the principle that 'all evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence.' Unacceptable infringements of the rights of the defence, in this sense, occur *when a conviction is based solely,*

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> *or in a decisive manner, on the deposition of a witness whom the accused has no opportunity to examine or have examined either during the investigations or at trial.*[179]

Veering from the tenor of that passage the Defence goes on to submit that "[w]hether a chamber has committed this error of law by relying 'in a decisive manner' on an uncross-examined statement depends to some extent on the notion of 'corroboration.'"[180]

82. The Appeals Chamber does not accept that as a general principle of law applicable to international criminal proceedings, uncorroborated hearsay evidence can never be the sole or decisive basis for a conviction.[181]

83. The Appeals Chamber notes that the discussion in the *Prlić et al.* Decision, as rightly put by the Defence, "concerned 'depositions' elicited by a judicial officer or lawyer, under oath, and recorded by stenographers."[182] It is worth noting that Rule 92*quater* of the Rules provides as follows:

> (A) The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92*bis*, if the Trial Chamber:
>
> (i) is satisfied of the person's unavailability as set out above; and
>
> (ii) finds from the circumstances in which the statement was made and recorded that it is reliable.
>
> (B) If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it.

84. The *Prlić et al.* Decision related to such a written statement. The *Prlić et al.* Decision expressly and solely relied on rulings of the European Court of Human Rights.[183] The Appeals Chamber notes that ECtHR decisions have been recognised by international criminal tribunals as a source of guidance regarding fair trial rights.[184] Their decisions regarding hearsay evidence can be of particular guidance to the Appeals Chamber because the European Convention contains identical language to the fair trial provisions of Article 17(4)(e) of the Statute for the protection of the right of an accused to examine witnesses against him.[185] The findings challenged in this case, however, are not based on written statements made for the purpose or in anticipation of proceedings (now usually referred to in some decisions as "testimonial hearsay");[186] or the circumstances in which the *Prlić et al.* Decision arose, which concern what may be described as the right of "confrontation",[187] which the Defence rightly noted has been discussed in the cases relied on by it.[188]

85. The Appeals Chamber considers that the issue in this case in regard to hearsay evidence turns on whether the Defence was right in its contention that reliance on uncorroborated hearsay evidence as the sole or decisive basis for incriminating findings of fact leading to a conviction amounted to an error in law. It is, therefore, in this context relevant and instructive to note that the ECtHR in the case of *Al Khawaja and Tahery*, decided on 15 December 2011, considered and expressly rejected a similar view as that put forward by the Defence in this case. In *Al Khawaja and Tahery*, the Grand Chamber of the ECtHR held that reliance on an uncorroborated hearsay statement as the sole or decisive basis for a conviction is not precluded as a matter of law and does not *per se* violate the accused's right to a fair trial.[189]

86. The opinion of the ECtHR in *Al Khawaja and Tahery* applying Article 6 of the European Convention was that there is no technical rule of law requiring "corroboration" or any other specific type of verification for hearsay evidence, but that the trier of fact must undertake a "fair and proper assessment of the reliability of [hearsay] evidence," and only where "such evidence is sufficiently reliable given its importance in the case" may that evidence be the basis for a conviction.[190] This is in consonance with the intent of Rule 89(B) and (C) of the Rules of the Special Court which the Appeals Chamber is bound to follow. In accordance with the Statute and Rules, the Trial Chamber admitted the evidence proffered before it, notwithstanding that it may have been hearsay or uncorroborated hearsay, as long as such evidence was relevant. Evidence does not become irrelevant because it is hearsay. It is instructive that only Rule 95 of the Rules expressly excludes the admission of evidence when it provides that: "No evidence shall be admitted if its admission would bring the administration of justice into disrepute."

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87. The Appeals Chamber recognises, however, that admission of evidence is not conclusive of its reliability, and emphasises that because hearsay evidence is admissible as substantive evidence in order to prove the truth of its contents, establishing the reliability of hearsay evidence is of paramount importance.[191] There exist in the laws applied by the Special Court safeguards designed to ensure the accused's rights of fair hearing and to ensure that evidence can be fairly challenged at trial.[192]

88. The Appeals Chamber notes that the Defence has not asserted that there was any violation of Taylor's statutory fair trial rights in connection with the Trial Chamber's use of hearsay evidence, uncorroborated or otherwise. The Defence has not alleged on appeal that the Trial Chamber improperly restricted its ability to present a defence, or that Taylor's rights to defend himself, as guaranteed by the Statute, were violated.[193] Rather, the fulcrum of its complaint is the unreliability of uncorroborated hearsay evidence, in relation to which part of the argument advanced pertains to the weight to be ascribed to such evidence, there being no opportunity to test the sources of the hearsay evidence.[194]

89. It is fitting to note that while written statements that could be a substitute for trial testimony may be subject to formal legal framework and safeguards, the abiding and lasting safeguard that what may be called "non-testimonial" hearsay evidence has is at the point of assessment of its reliability. It is at that point that a careful appellate review of the Trial Chamber's evaluation becomes imperative in the interest of justice and fair hearing. Several factors would go into the review of such evaluation. It is in that process that pronouncement is made on the test of reliability, by inquiry into whether or not the Trial Chamber tested the reliability of hearsay evidence, using corroboration as a factor.[195]

90. The Appeals Chamber having considered the submissions of the Parties, its jurisprudence and its Statute and Rules regarding the use of hearsay evidence, and noting the counterbalancing protection of the rights of the accused,[196] finds no merit in the argument that it is "legally impermissible" to base a particular conviction only on uncorroborated hearsay evidence. It is important, however, that a trier of fact should carefully evaluate the reliability of such evidence and bear in mind the safeguards designed to ensure fairness.[197]

(c) Conclusion

91. Given the safeguards provided by the Statute and the Rules of the Special Court, as interpreted in the jurisprudence of the Court, there is no prohibition against the use of uncorroborated hearsay evidence, even if such hearsay is the basis of the conviction, provided that the Trial Chamber has subjected the hearsay evidence to a fair and proper assessment of its reliability.[198]

3. Adjudicated Facts

92. In Ground 6, the Defence complains that the "[t]he Trial Chamber erred in fact and law in finding that the Prosecution had successfully challenged the truth of Adjudicated Fact 15 from the AFRC trial, thus requiring the Trial Chamber's re-consideration of the matters in question."[199] To put the matter in proper perspective, the procedural history of this issue is set out.

93. On 9 February 2009, following the close of the Prosecution case, the Defence submitted an application to the Trial Chamber pursuant to Rule 94(B) requesting that it take judicial notice of 15 facts adjudicated in the *Brima et al*. Trial Judgment.[200]

94. In its application, the Defence submitted, *inter alia*, that "Rule 94(B) create[s] a well-founded presumption for the accuracy of [the adjudicated] fact . . . [but] the opposite party may put such facts in question by leading 'reliable and credible evidence to the contrary.'"[201] In relation to whether the Prosecution would be prejudiced, it submitted that "[t]he Prosecution would not be disadvantaged"[202] by judicial notice because "[t]he Prosecution may have already led evidence to challenge the rebuttable presumption that would be established if the Trial Chamber judicially notes these facts,"[203] or, alternatively, it could "in the future . . . call witnesses to challenge any rebuttable presumption that would be created."[204]

95. In response to the Defence application, the Prosecution submitted, *inter alia*, that Rule 94(B) had the legal effect of "establishing a 'presumption for the accuracy of [a fact] which therefore does not have to be proven again

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at trial, but which, subject to that presumption, may be challenged at that trial.'"[205] It submitted that the timing of the application, following the close of the Prosecution case, placed it at a disadvantage because it had "presented its entire case without the knowledge of its burden to overcome a rebuttable presumption as to the veracity of certain . . . facts."[206] It further submitted that the Defence application required "the Trial Chamber to perform a mental somersault to adopt a rebuttable presumption after the presentation of the rebutting evidence."[207]

96. Responding to the Prosecution's claim that it would be disadvantaged, the Defence argued that evidence already led "in respect to the issues contained in the proposed adjudicated facts . . . could be used to challenge any rebuttable presumption created [and that therefore] . . . the Prosecution is not prejudiced by the admission of these adjudicated facts even though it has essentially closed its case."[208] It further argued that:

> The admission of adjudicated facts at this stage does not require any mental somersault on the part of the Trial Chamber. While the Prosecution has presented the bulk of its evidence, it is assumed that the Trial Chamber has not yet made a final determination on the accuracy, credibility, or reliability of the Prosecution evidence; the Defence case may impact its assessment in this regard. *A presumption of accuracy for adjudicated facts is only one more factor to consider when weighing all the evidence at the conclusion of the case*.[209]

It also submitted that the Prosecution was not disadvantaged because "the evidence already led by the Prosecution on this issue could either be used to rebut the presumption of accuracy of the adjudicated facts or to fill in additional and contextual details."[210]

97. The Trial Chamber granted the Defence's application to judicially notice all 15 adjudicated facts, including Adjudicated Fact 15 (which is the subject of the present Ground of Appeal).[211]

98. At the conclusion of the trial, in its Final Trial Brief filed on 14 January 2011, the Prosecution argued that the evidence showed that the RUF participated in the Freetown Invasion in January 1999 and assisted Gullit's forces inside the city through the provision of manpower.[212] Specifically, the Prosecution argued that:

> The RUF also contributed significant experienced manpower to the group [that invaded Freetown in January 1999]. These fighters were members of the Red Lion battalion which came with Gullit's forces from the North, RUF fighters freed from Pademba Road prison, bodyguards of the RUF radio operators, and a small but significant force commanded by Idrissa Kamara aka "Rambo Red Goat" which was sent by Issa Sesay and joined the fighters in the city, playing a key role in the atrocities.[213]

99. The Defence did not refer to Adjudicated Fact 15, or the Prosecution's argument quoted above, in either its Brief in Response to the Prosecution Final Trial Brief or during its closing argument.

100. In this appeal, the Defence now contends that the Trial Chamber erred in the procedure whereby it determined that the presumption of accuracy attending an admitted adjudicated fact had been rebutted.

(a) Submissions of the Parties

101. The Defence challenges the Trial Chamber's finding "that a small contingent of the troops Bockarie sent as reinforcements, led by Idrissa Kamara (a.k.a. Rambo Red Goat), was able to join Gullit's troops in Freetown some time after Gullit's forces had captured the State House."[214] It asserts that this finding is contradicted by Adjudicated Fact 15, which, it avers, was never properly challenged, and therefore invalidates the impugned finding.

102. As a matter of law, the Defence argues that once an adjudicated fact has been accepted, its accuracy cannot be assessed by the Trial Chamber in light of conflicting evidence, unless the party that submitted it is given notice that a challenge to the accuracy has been made so that it can present additional evidence to support the challenged fact.[215] It contends that by the Trial Chamber's assessment of the accuracy of Adjudicated Fact 15 in its Judgment, Taylor suffered irreparable prejudice, in that he had no "notice that Adjudicated Fact 15 was in contest"[216] and was denied the "opportunity to adduce additional evidence to confirm the adjudicated fact."[217]

103. In response, the Prosecution rejects the Defence's articulation of the law, and submits that the admission of adjudicated facts does not affect the Trial Chamber's function of "assessing their relevance and weight *in light of the totality of the evidence* at trial."[218] It contends that the Defence expressly recognised this in its application seeking judicial notice of Adjudicated Fact 15.[219]

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104. The Defence submits in reply that mere opposition to accepting an adjudicated fact is insufficient for the purposes of challenging an adjudicated fact at a later stage.[220] It argues that to hold as such would mean that "no party could ever rely on an adjudicated fact if the other party had objected."[221]

(b) Discussion

105. Adjudicated Fact 15, taken from the *Brima et al*. Trial Judgment, reads:

> Following heavy assaults from ECOMOG, the troops were forced to retreat from Freetown. This failure marked the end of the AFRC offensive as troops were running out of ammunition. While the AFRC managed a controlled retreat, engaging ECOMOG and Kamajor troops who were blocking their way, RUF reinforcements arrived in Waterloo. However, the RUF troops were either unwilling or unable to provide the necessary support to the AFRC troops.[222]

The Defence asserts that the last line of this finding represents "the factual conclusion from the [*Brima et al.* Trial Judgment] that the RUF had not been part of the AFRC operation in Freetown in January 1999."[223]

106. In its Judgment, the Trial Chamber reasoned that "by submitting that RUF reinforcements sent by Bockarie arrived in Waterloo before Gullit retreated from Freetown and that they attempted and partially succeeded in connecting with the troops in the city, the Prosecution has sufficiently challenged the truth of the asserted fact as to require the Trial Chamber's re-consideration of the matters in question."[224] The evidence referred to by the Trial Chamber had been led by the Prosecution during its evidence-in-chief and prior to the admission of Adjudicated Fact 15. The Trial Chamber also took into account that the Prosecution and Defence had included as agreed fact at the outset of the trial that "[o]n about 6 January 1999, *inter alia*, RUF and AFRC forces attacked Freetown."[225] The Trial Chamber then found that the Prosecution had proved beyond a reasonable doubt "that a small contingent of the troops Bockarie sent as reinforcements, led by Idrissa Kamara (a.k.a. Rambo Red Goat), was able to join Gullit's troops in Freetown some time after Gullit's forces had captured the State House."[226]

107. The Defence argues that once the Trial Chamber accepted Adjudicated Fact 15, it could not rely on evidence previously submitted to challenge the presumption of accuracy which attended it. It contends furthermore that the Trial Chamber erred in failing to give notice to the Defence that the adjudicated fact had been challenged, and thereby failed to give it an opportunity to present additional evidence in support of its contention that the RUF had not been part of the operation in Freetown.

108. Rule 94(B) provides:

> At the request of a party or of its own motion, a Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Special Court relating to the matter at issue in the current proceedings.[227]

109. The legal effect of taking "judicial notice" of adjudicated facts pursuant to Rule 94(B) is that it creates a rebuttable presumption in favour of the accuracy of those facts. Unlike facts of common knowledge admitted under Rule 94(A), the accuracy of facts admitted under Rule 94(B) may be challenged.[228]

110. It is commonly accepted that adjudicated facts are creations of international tribunals introduced through their Rules to increase efficiency and assist in factual harmonisation. Often they do neither. The amount of time consumed in their submission, evaluation and review can be substantially greater than the time necessary to introduce testimonial or documentary evidence and subject it to cross-examination and scrutiny. Likewise, harmonisation of facts is not always desirable. Investigations and issues change, depending on the focus of successive cases, and new facts that were either unavailable or irrelevant in previous trials come to light. Adjudicated Fact 15 is such a finding. It originally appeared in the *Brima et al.* Trial Judgment as a "context" finding, which the parties in that case had no interest in contesting. A risk in the application of Rule 94(B) is that the understanding of facts, which should be evolving in the interest of justice, can instead be calcified in the interest of harmony.

111. Whereas it is usual practice for parties to seek to admit adjudicated facts before the introduction of any evidence, the Defence in this case sought to introduce its fifteen adjudicated facts after the conclusion of the Prosecution's case in chief, and over the Prosecution's objections.[229] The procedural history above sets out the Parties'

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respective submissions on the matter,[230] including the Defence's reply that "[t]he Prosecution would not be disadvantaged"[231] by admission of the adjudicated facts because "[t]he Prosecution may have already led evidence to challenge the rebuttable presumption that would be established if the Trial Chamber judicially notes these facts,"[232] and because a "presumption of accuracy for adjudicated facts is only one more factor to consider when weighing all the evidence at the conclusion of the case."[233]

112. At trial, the Defence successfully argued that the Trial Chamber should admit the adjudicated facts with their presumption of accuracy because it was only one more factor to be weighed by the Trial Chamber along with all of the other evidence submitted at any time throughout the trial. This approach, as it argued before the Trial Chamber, is consistent with the jurisprudence of the Special Court. Now on appeal, without expressly noting it, the Defence has shifted its argument and impliedly asks this Chamber to reject its own jurisprudence on the status and effect of adjudicated facts and adopt a contrary approach.

113. The Trial Chambers of the Special Court have interpreted adjudicated facts introduced under Rule 94(B) as *evidence*, to be weighed with all of the evidence at the time of deliberation.[234] As stated by Trial Chamber I: "In its final deliberations, the Trial Chamber is judicially obligated to assess the weight of any adjudicated facts that are judicially noticed in light of all the evidence presented in the case."[235] The extent to which contrary evidence, regardless of when it is received, undermines the adjudicated fact with its rebuttable presumption of accuracy is a matter to be determined by the trier of fact when viewing it in the context of the evidence as a whole, and evaluated after all of the evidence has been received.[236] It is this position which is set out in the jurisprudence of the Special Court and was relied on by the Defence when they sought admission of Adjudicated Fact 15. It was this position the Trial Chamber followed in evaluating the effect of Adjudicated Fact 15 in the Trial Judgment.

114. On appeal, the Defence, citing an ICTY Trial Chamber ruling,[237] now urges this Chamber to find error in this Trial Chamber's adherence to the practice of the Special Court. The Defence now argues that an adjudicated fact is not in itself evidence that can be weighed against evidence of facts contrary to it. Rather "contrary evidence is to be understood as a step to reopen the evidentiary debate on the fact the Chamber took judicial notice of."[238] Using this approach, it argues that notice that the adjudicated fact had been successfully challenged would be necessary because the proponent of the adjudicated fact must know that if it "still wishes to meet its burden of persuasion in relation to that fact" the proposing party must be given an opportunity "to submit evidence in relation to the now challenged fact, which can then be weighed against the contradicting evidence" so as to restore "a situation in which the Trial Chamber weighs evidence *pro* and *contra* the judicially noticed fact at issue and makes its own finding."[239]

115. The difference between the two approaches is clear. According to the approach now argued on appeal by the Defence, the adjudicated fact cannot be weighed against conflicting evidence at the conclusion of the case, but disappears entirely once the Trial Chamber considers that conflicting evidence has been introduced. At this point, the trier of fact must make a judicial decision regarding the reliability of the adjudicated fact based solely on the evidence for and against it. This will necessarily require notice to the proponent of the fact and the opportunity to present evidence in support of the factual accuracy of the proposition contained in the challenged adjudicated fact. Accordingly, on that approach the adjudicated fact, once challenged, has no evidential value whatsoever.

116. Under the Special Court's jurisprudence, however, the adjudicated fact, with its presumption of accuracy, is a piece of evidence like any other, and it exists as such throughout the trial, regardless of when admitted. It can be argued by the parties in their closing briefs and weighed against the evidence as a whole during deliberations. Under this approach, there is no point at which the Trial Chamber could advise that the fact had been successfully challenged because it can only make that determination, if at all, when it deliberates on the evidence in its entirety.

117. The Defence's current argument in favour of an approach in line with their present theory was never raised at trial, and the Trial Chamber was never given an opportunity to rule on it. Instead, the Trial Chamber was persuaded by the Defence to apply the established approach of the Special Court and to admit Adjudicated Fact 15, taking into account evidence to the contrary, regardless of when it was led, and weighing it together with all the evidence at the conclusion of the case. This, as the Defence argued before the Trial Chamber, is entirely consistent with the jurisprudence and the Rules of the Special Court. The Appeals Chamber agrees. There is no error.

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(c) Conclusion

118. The Appeals Chamber holds that once admitted by the Trial Chamber, an adjudicated fact, with its attending presumption of accuracy, is a piece of evidence that can be considered and weighed by the Trial Chamber, along with all the other evidence as well as the presumption of innocence, during the deliberation process.

D. Alleged Errors in the Assessment of Credibility

1. Assessment of the Credibility of 22 Witnesses

119. In Ground 3, the Defence challenges the Trial Chamber's approach to the assessment of the credibility of 22 witnesses.[240]

(a) Submission of the Parties

120. The Defence argues that the Trial Chamber erred by assessing the general credibility of only 22 witnesses,[241] whom it "arbitrarily" considered "significant,"[242] and that the Defence was prejudiced because 20 of the 22 witnesses were Prosecution witnesses.[243] It further contends that these general credibility assessments were "in effect, dispositive,"[244] and that the Trial Chamber did not consistently assess credibility in relation to specific facts to which the witnesses testified, using instead the general credibility assessment to justify the Trial Chamber's reliance on otherwise unreliable testimony.[245] It asserts that the Trial Chamber also erred by failing to reassess generally credible witnesses when it noted that some of their evidence was unreliable.[246]

121. The Prosecution responds that the Trial Chamber did not err by providing additional reasoning explaining its analysis of the credibility of certain significant witnesses,[247] and that this was a "matter of style and not an error of law."[248] It notes that the numerical ratio of 20:22 witnesses reflects the number of witnesses each Party called.[249] It submits that a Trial Chamber can find a witness reliable in respect to some aspects of their testimony and not others,[250] without requiring re-evaluation of the general credibility of the witness.[251]

(b) Discussion

122. The credibility of witnesses is within the Trial Chamber's discretion,[252] and the credibility and reliability of the evidence is a matter for the Trial Chamber to assess in view of the circumstances of the case.[253] This is because the "Trial Chamber has the advantage of observing witnesses in person and so is better positioned than the Appeals Chamber to assess the reliability and credibility of the evidence."[254] The Appeals Chamber in *Brima et al*. held that a Trial Chamber must look at the totality of the evidence on record in evaluating the credibility of a witness, and that a party who alleges on appeal that a Trial Chamber has made a finding as to the credibility of a witness without considering the totality of the evidence on record must show clearly that such error occurred.[255]

123. The Trial Chamber explained in detail in its Judgment its approach to assessing credibility.[256] The Trial Chamber articulated the factors it considered as to each witness, including their demeanour, conduct and character (where possible).[257] It also considered their knowledge of the facts to which they testified, their proximity to the events described, the plausibility and clarity of their testimony, their impartiality, the lapse of time between the events and the testimony, their possible involvement in the events and the risk of self-incrimination, inconsistencies in their testimony and their ability to explain such inconsistencies, any motivations to lie and their relationship with Taylor.[258]

124. In addition to explaining its credibility analysis for all witnesses, the Trial Chamber explained in greater detail its assessment of the credibility of 22 witnesses. The Defence has challenged the selection of these 22 witnesses as "arbitrary." However, the Trial Chamber stated in the Judgment that it provided greater detail for its reasoning for these witnesses because they were significant witnesses whose credibility had been challenged by the Parties.[259] That the list included more Prosecution witnesses than Defence witnesses was a consequence not only of there being a significantly larger number of Prosecution witnesses, as the burden of proof rests on the Prosecution,[260] but it also reflected the fact that the Defence challenged in its closing arguments[261] a larger number of witnesses than the Prosecution.[262] Of the 22 witnesses, the Trial Chamber found 16 witnesses "generally credible,"[263] and did not find the other six to be so.[264] The designation "generally credible" does not reflect the Trial

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Chamber's misgivings as to the witnesses' credibility, but rather recognises that not everything every generally credible witness said would be accepted, and not everything said by witnesses who were not found to be generally credible would be rejected.[265] The general credibility of a witness, as determined by the observation of his entire testimony, is a factor which the Trial Chamber could and did properly consider when analysing the reliability of individual aspects of the witness's testimony.

(c) Conclusion

125. The Appeals Chamber finds no error in the Trial Chamber's approach to its assessment of the credibility of witnesses, its application of the law, as established in this Court's jurisprudence, governing the evaluation of the credibility of witnesses to all witnesses or its selection and assessment of the 22 witnesses for whom fuller explanations of its reasoning was provided.

2. Accomplice Witnesses

(a) Submissions of the Parties

126. In Grounds 7, 15, 23 and 40, the Defence, as part of the submissions in support of those grounds, referred to some witnesses it described briefly as accomplice witnesses and commented, also in passing, on the Trial Chamber's evaluation of the evidence of accomplice witnesses, alleging that the Trial Chamber failed to apply the requisite scrutiny or caution to their evidence.[266]

127. The Defence submits that the Trial Chamber erred in its assessment of the credibility of certain accomplice witnesses, claiming that although the Trial Chamber recognised that these accomplice witnesses might have had a motive to lie when giving testimony, it nonetheless failed to use caution when assessing their credibility.[267] It gives examples of accomplice witnesses who the Defence submits would not have been considered credible had the Trial Chamber exercised the requisite caution.[268]

128. The Prosecution argues that the Trial Chamber expressly noted its obligation to treat accomplice evidence with caution and the factors it was to take into account in assessing the reliability of such evidence.[269] It further submits that regarding the witnesses in question, the Trial Chamber identified their connection to the crimes,[270] carefully assessed their credibility and provided extensive reasons for its conclusions as to their credibility.[271] The Prosecution points out that the fact that the Trial Chamber declined to rely on parts of some of these witnesses' testimony, while relying on other parts, evidences a cautious approach,[272] as does the rigorous and reasoned assessment the Trial Chamber undertook in determining both the witnesses' general credibility and their credibility in respect of specific portions of their testimony.[273]

(b) Discussion

129. The Appeals Chamber considers that this aspect of the case of the Defence in this appeal raises no momentous issue of law[274] and can be disposed of briefly, since the assessment of accomplice witnesses was mentioned merely tangentially in those grounds as one instance of several alleged flaws in the findings of fact. The Appeals Chamber considers that, as with any other witness, a Trial Chamber may convict on the basis of a single accomplice witness if the Trial Chamber finds the witness credible and his evidence reliable.[275] The Appeals Chamber further affirms that the Trial Chamber is in a far better position than the Appeals Chamber to decide whether alleged participation in the commission of crimes affects the credibility and the reliability of the witness's testimony.[276]

130. In keeping with the jurisprudence of the Special Court, the Trial Chamber in this case stated that in assessing the credibility of accomplice witnesses, it specifically considered whether or not the accomplice had an ulterior motive to testify as he did.[277] Its credibility assessments included discussions of witnesses' potential ulterior motives due to their prior relationship with Taylor or role in the RUF/AFRC, and the Defence's related challenges at trial.[278] The Trial Chamber found some accomplice witnesses to be generally credible and others not.[279]

131. Ground 7, in which the Defence challenges the Trial Chamber's finding that Taylor and Bockarie planned an attack on Freetown, primarily concerns the Defence's challenges to the Trial Chamber's reliance on the evidence of three accomplice witnesses, TF1-371, Isaac Mongor and Karmoh Kanneh.[280] It claims that the Trial Chamber

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failed to address whether these witnesss had an ulterior motive to testify and failed to treat their evidence with caution.[281]

132. The Trial Chamber's assessment of the credibility of these accomplice witnesses is consistent with the manner in which it went about assessing the credibilty of the other accomplice witnesses challenged by the Defence.[282] While highlighting that these witnesses were accomplices and averring that the Trial Chamber erred by accepting their testimonies on the specific allegation without any reservation,[283] the Defence fails to address the Trial Chamber's actual evaluation of the whole of the evidence.[284]

133. The Appeals Chamber opines that accomplices are neither inherently incredible nor inherently unreliable witnesses.[285] As participants in the crimes and insiders, they may provide false testimony due to ulterior motives. They may also provide credible and reliable testimony due to their intimate knowledge of the crimes.[286] A determination must be made on a witness-by-witness basis.

(c) Conclusion

134. The Appeals Chamber has considered the Defence submissions and reviewed the Trial Chamber's reasoning as to each of the Defence's challenges to the Trial Chamber's assessment of the credibility of accomplice witnesses. It is satisfied that the Trial Chamber properly assessed whether the accomplices had ulterior motives to testify as they did, and its conclusions were reasonable.

135. The Trial Chamber acknowledged the jurisprudence of this Court in assessing accomplice evidence and followed it in its Judgment, explaining how it had applied the law with care to the analyses of the credibilty of individual accomplice witnesses. The Trial Chamber recognised that the majority of the witnesses were "insiders" who fit within this Court's use of the term "accomplice", and engaged in careful analysis of their credibility in conjunction with all the other evidence on the record. The Appeals Chamber finds no error in the cautious approach articulated by the Trial Chamber or its application of that approach to individual accomplice witnesses, on a witness-by-witness basis.

3. Witnesses who Received Benefits

136. In Grounds 5, 12 and 40, the Defence challenges the Trial Chamber's assessment of the credibility of witnesses who had received payments of money and other benefits from the Registry and/or Office of the Prosecutor, arguing that the Trial Chamber failed to exercise caution when assessing their testimony.[287] The Defence makes this challenge in relation to seven protected witnesses in Ground 5,[288] one witness in Ground 12[289] and three other protected witnesses in Ground 40.[290]

(a) Submissions of the Parties

137. The Defence contends that the Trial Chamber erred in its credibility assessment of all witnesses who had received benefits in connection with giving their testimony because it failed to view the evidence with sufficient caution.[291] In addition, it challenges the Trial Chamber's assessment of the credibility of five Prosecution witnesses,[292] regarding whom it claims that the Trial Chamber performed no substantive analysis of the appropriateness of the benefits provided to them.[293] Instead, according to the Defence, for those five witnesses the Trial Chamber wrongly engaged in "the speculative and fruitless exercise of trying to determine the extent to which payments and benefits coloured the testimony of the respective witnesses."[294] The Defence asserts that there is no basis on which the Trial Chamber could have safely made such subjective determinations.[295]

138. The Prosecution responds that the Trial Chamber consistently and carefully considered payments and benefits to witnesses as one of several factors in its credibility assessments,[296] and that it is fully within the Trial Chamber's discretionary power to make "subjective determinations" regarding whether payments and benefits affected a witness's credibility.[297] For each of the five witnesses at issue, the Prosecution avers that the Trial Chamber thoroughly explained its witness-by-witness credibility analysis and expressly considered whether payments or other benefits influenced the witness's motivation to tell the truth.[298] It further argues that the Trial Chamber also considered other factors in connection with determining their credibility, including whether the witnesses were accomplices, the source of their evidence and their consistency in light of extensive cross-examination.[299] It points out

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that the Trial Chamber treated the evidence of all of the witnesses at issue with caution by consistently evaluating "the detail, quality and circumstances of their evidence, looking for corroboration and considering the totality of the evidence when evaluating whether particular evidence was reliable."[300] It contends that the methodology set out in paragraph 195 of the Judgment applied to the Trial Chamber's assessments of each witness's credibility,[301] and that it was unnecessary for the Trial Chamber to explicitly repeat it every time it relied on a witness's evidence.[302]

(b) Discussion

139. The Appeals Chamber has had occasion to hold "that [the] allocation of payment, allowances or benefits may be relevant to assess the credibility of witnesses testifying before the Court."[303] In *Sesay et al*., considering a challenge to the Trial Chamber's assessment of witness credibility in this regard, the Appeals Chamber held that the Trial Chamber had met its obligation to consider and evaluate the credibility of the witness, in light of the evidence of payments made by the Registry's Witness and Victim's Section (WVS) and the Prosecutor's Witness Management Unit, by explaining its approach and by giving three examples as to how it undertook its evaluation.[304]

140. In the present case, the Trial Chamber took into account the following:

(i) The costs of allowances necessarily and reasonably incurred by witnesses as a result of testifying before a Chamber are met by the Special Court in accordance with the "Practice Direction on Allowances for Witnesses and Expert Witnesses," issued by the Registrar on 16 July 2004.[305] No distinction is made between witnesses for the Prosecution and Defence.[306]

(ii) Records of disbursements to witnesses for both parties were fully disclosed, and disbursement forms concerning witnesses for both parties were admitted in evidence,[307] and used to cross-examine witnesses.[308]

(iii) Information regarding Special Measures taken by the prosecutor in connection with the support and assistance of witnesses according to Rule 39(ii)[309] was disclosed to the Defence, admitted in evidence,[310] and used to cross-examine Prosecution witnesses.[311]

(iv) Article 16(4) of the Statute and Rule 34 of the Rules authorize WVS to provide short and long-term protection and support, including relocation, to witnesses and victims who appear before the Special Court.[312]

(v) The Prosecution's disclosure that indemnity letters were provided to some witnesses by the Prosecution,[313] as were offers to release witnesses from prison.[314]

141. In assessing the credibility of witnesses who received benefits in connection with their testimony, the Trial Chamber stated that it took into account information about witness payments made both by the WVS and by the Prosecution, on a witness-by-witness basis, and considered any cross-examination of the witness in relation to those benefits.[315] It considered whether the benefit conferred upon and/or payment made to each witness went beyond that "which is reasonably required for the management of a witness."[316] In assessing whether such a payment was "reasonably required," the Trial Chamber also noted that it took into account the cost of living in West Africa and the station in life of the witness receiving the payment.[317] The Trial Chamber stated that it had also taken into consideration evidence that witnesses were promised relocation or had already been relocated at the time they gave evidence, and the effect that such promises may have had on their testimony.[318] It also considered cross-examination in relation to those issues.[319]

142. The Trial Chamber acknowledged the jurisprudence of the Special Court[320] and followed it in its assessment of each witness who received any form of consideration from the Court or from the Prosecutor, including those challenged by the Defence in these Grounds.[321]

(c) Conclusion

143. From a scrutiny of the Trial Judgment it is evident that for each witness who received any benefit or promise of benefit in connection with his or her testimony, the Trial Chamber carefully and systematically considered evidence relevant to the benefit and made a careful assessment as to the effect that the receipt or promise of the benefit

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had on the individual witness's credibility. The Appeals Chamber finds no error in the cautious approach articulated by the Trial Chamber or its application of that approach to individual witnesses, on a witness-by-witness basis.

4. General Conclusion on Credibility

144. It is primarily for the Trial Chamber to determine whether a witness is credible and to decide which witness's testimony to prefer, without necessarily articulating every step of the reasoning in reaching a decision on these points.[322] The Appeals Chamber will uphold a Trial Chamber's findings on issues of credibility unless it finds that no reasonable tribunal could have made the impugned finding.[323]

145. In this case, the Trial Chamber not only articulated a careful and cautious approach to determining the credibility of all witnesses, but carefully provided additional details in articulating the factors it took into consideration in the assessment of the credibility of witnesses who fell within the enumerated categories: (i) 22 witnesses whose veracity was challenged during closing argument; (ii) accomplice witnesses; and (iii) witnesses who had received some form of benefit in connection with testifying before the Special Court. In singling out these three categories, the Trial Chamber did not deviate from its general credibility analysis, but articulated specifically how its general analysis applied to these witnesses whose credibility had been particularly challenged or who fell into categories presenting apparent questions of veracity. The Appeals Chamber holds that in resolving those questions, the Trial Chamber properly articulated and correctly applied the relevant factors established in the jurisprudence of the Special Court.[324]

E. Alleged Errors in the Assessment of Reliability

146. Whereas credibility relates to the veracity of the witness generally, reliability relates to the individual facts to which the witness testifies. The Defence challenges the Trial Chamber's assessment of the reliability of hearsay statements it used in support of "incriminating findings."[325] It asserts that the Trial Camber was not cautious in its approach to some hearsay statements because it relied on hearsay evidence that was uncorroborated,[326] and because it failed to consider the reliability of the source of the hearsay statement.[327] It further contends that the Trial Chamber drew from the evidence inferences that were not reliable because they were not the only reasonable conclusion open to a trier of fact.[328]

1. The Reliability of Hearsay Evidence

(a) Submissions of the Parties

147. The Defence submits that the Trial Chamber articulated but failed to apply the principle that hearsay evidence must be approached with caution.[329]

148. The Prosecution responds that the Trial Chamber recognised that it was required by law to approach hearsay evidence with caution.[330]

(b) Discussion

149. Hearsay is an out of court statement used for the truth of the matter asserted. The Special Court's jurisprudence recognises that hearsay evidence may be used by the Trial Chamber in reaching its conclusions on the guilt of the accused.[331] In this regard, the jurisprudence of the Special Court is consistent with the practice of the post-Second World War courts,[332] and the other *ad hoc* tribunals.[333] It is equally well established that care needs to be taken when relying upon hearsay evidence.[334] Establishing the reliability of hearsay evidence is of paramount importance because hearsay evidence is admissible as substantive evidence in order to prove the truth of its contents.[335] Caution in the reliance on hearsay evidence, however, does not imply a formulaic application of set rules, but rather a holistic analysis of the reliability of the out of court statement, the factors for which will differ according to the evidence and the context.[336]

150. The Trial Chamber comprehensively set out its approach to the evaluation of hearsay evidence, acknowledging in its Judgment that in addition to evidence of facts within a witness's own knowledge, it had also considered

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hearsay evidence,[337] which it noted it had broad discretion to do.[338] It stated that before determining whether or not to rely on hearsay evidence, it examined such evidence with caution, as the weight to be afforded to such evidence will usually be less than that accorded to the evidence of a witness who has given the evidence under oath or solemn declaration and who has been tested in cross-examination.[339] In so doing, the Trial Chamber took into account whether or not the hearsay evidence was voluntary, truthful, and trustworthy, and considered both its context and the circumstances under which it arose.[340]

151. In addition, the Trial Chamber explained the factors that it took into account in assessing the reliability of the hearsay evidence, including whether it was first-hand or removed,[341] whether it emanated from identified or unidentified/anonymous sources,[342] the opportunity to cross-examine the person who made the statement,[343] whether the hearsay statement was corroborated,[344] the [graphic] potential for errors of perception and the circumstantial guarantees of trustworthiness surrounding the statement.[345] The Trial Chamber noted that when assessing the evidence, it considered any motivation to lie as well as the declarant's relationship with Taylor.[346]

(c) Conclusion

152. In conclusion, the Appeals Chamber holds that the Trial Chamber properly considered the law and practice of the Special Court, cautioned itself and carefully articulated the factors it considered in assessing the reliability of hearsay evidence.

2. Alleged Uncorroborated Hearsay Evidence

153. The Defence asserts in seven Grounds that 17 findings should be invalidated because they rely on uncorroborated hearsay evidence, which, as a general principle of law, cannot be the sole basis for "specific incriminating findings of fact."[347]

(a) Submissions of the Parties

154. The Defence submits that the Trial Chamber unreasonably relied solely on uncorroborated hearsay evidence for specific incriminating findings of fact.[348]

155. In response, the Prosecution argues that "corroboration is only one of many potentially relevant factors in the Trial Chamber's assessment of the probative value of hearsay and is not mandatory,"[349] that the Defence "often mischaracterises evidence as being uncorroborated when it was corroborated,"[350] and that the Trial Chamber's evaluation of the evidence was reasonable.

(b) Discussion

156. The Appeals Chamber reiterates that there is no general principle of law precluding the use of uncorroborated hearsay evidence as a sole or decisive basis for a "specific incriminating finding of fact" or for a conviction.[351] The Defence has neither challenged the adequacy of the fair trial safeguards nor alleged that any have been violated in connection with its challenges to the assessment and use of hearsay evidence by the Trial Chamber.

157. The Appeals Chamber has reviewed the 17 findings to which the Defence objects, but none of them is decisive to establishing any essential element of either the substantive crimes or the forms of criminal participation for which Taylor was convicted.[352]

158. The Appeals Chamber has further considered the Trial Chamber's reasoning regarding its evaluation of the evidence in the 17 impugned findings. For many of those findings, the Trial Chamber relied on combinations of direct, circumstantial and hearsay evidence, and the evidence could equally, if not more accurately, be characterised as direct and circumstantial evidence *supported by* hearsay evidence.[353] For example: (i) the supply of materiel from Taylor via intermediaries in 1998 and 1999;[354] (ii) trips by Bockarie to Liberia in 1998 during which he obtained materiel from Taylor;[355] (iii) the October 1999 arms and ammunition shipment from Taylor;[356] and (iv) the supply of materiel from Taylor via intermediaries in 2000 and 2001.[357]

159. A particularly notable example of the admixture of direct, circumstantial and hearsay evidence is in the findings regarding Taylor's facilitation of the Burkina Faso shipment. In Ground 23, the Defence asserts that the

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Trial Chamber "relied heavily on eight witnesses who gave hearsay testimony based on a single hearsay source—Sam Bockarie", in order to reach this finding,[358] and submits that only two other witnesses offered evidence of Taylor's involvement.[359]

160. There was extensive evidence on the trial record relating to the Burkina Faso shipment,[360] and the Trial Chamber provided detailed reasoning for its evaluation of that evidence and its conclusions.[361] It was undisputed that in or around November 1998, Sam Bockarie, with a delegation, left Sierra Leone for Burkina Faso, and that on their way to Burkina Faso this delegation stopped in Monrovia.[362] It was also uncontested by the Parties that the delegation was joined in Monrovia by Ibrahim Bah and Musa Cissé, Taylor's Chief of Protocol, who accompanied the delegation to Burkina Faso.[363] The Parties further agreed that Bockarie and his delegation returned to Buedu, Sierra Leone, around late November/early December 1998 with a large quantity of arms and ammunition to use in the implementation of the Bockarie/Taylor Plan.[364] The Trial Chamber found that this materiel was subsequently provided to Issa Sesay for the attack on Freetown in the implementation of the Bockarie/Taylor Plan.[365]

161. In its analysis, the Trial Chamber relied on evidence of events prior to Bockarie's departure for Burkina Faso, noting that "[t]he Prosecution witnesses agreed that the RUF senior officers initiated a request to [Taylor] to obtain arms and ammunition."[366] Isaac Mongor testified that he attended a commanders' meeting convened by Sam Bockarie in early November 1998 at Waterworks in Buedu, at which the commanders drafted a letter to Taylor requesting ammunition.[367] Daniel Tamba took the letter to Taylor, and three days later Bockarie told Mongor that he had received a call from Taylor asking him to go to Monrovia.[368] Mongor also stated that Bockarie took some diamonds to Liberia, which he used to pay for the ammunition and which he left with Taylor.[369] Similarly, Augustine Mallah testified that he attended a meeting of senior officers and men convened by Bockarie at his residence in late 1998, at which Bockarie stated that he was tired of all of them being confined to Kailahun District and that he would go to see Taylor in Liberia in order to see whether they could get their needs met.[370] TF1-567 recalled that in October/November 1998 in Buedu, he attended a meeting with Bockarie, who said that he was travelling to Liberia to meet Taylor and ask for his assistance to recapture Koidu Town.[371] Albert Saidu testified that before Bockarie left for Monrovia, he showed Saidu "a white paper" containing diamonds and stated that he was taking the diamonds to Taylor.[372] It was undisputed that Bockarie did in fact go to Monrovia soon after this conversation.[373]

162. The Trial Chamber also relied on evidence of events in Monrovia after the shipment arrived.[374] Dauda Aruna Fornie testified that he accompanied Sam Bockarie to Liberia, that he remained at Base 1 for one week while Bockarie and the rest of the group travelled to Burkina Faso; that he heard Bockarie, Eddie Kanneh and Benjamin Yeaten discussing an attack on Kono after Bockarie's return; and that he witnessed two trucks of ammunition travelling from Monrovia to Buedu accompanied by Joseph Marzah and Daniel Tamba.[375] Similarly, Jabaty Jaward testified that a large consignment of materiel was conveyed to Buedu, escorted by Daniel Tamba, Joseph Marzah, Abu Keita and others.[376] TF1-371 testified that Bockarie returned to Buedu with materiel accompanied by Joseph Marzah, Daniel Tamba and others.[377] Varmuyan Sherif and Joseph Marzah, who were both present in Monrovia when the shipment arrived from Ouagadougou,[378] also provided direct evidence regarding events in Liberia. Both Marzah and Sherif testified that the shipment was transported from "Roberts [*sic*] International Airport" to White Flower, from where it was distributed. Sherif testified that Taylor instructed him to collect the shipment from the airport, and that once the shipment was stored at White Flower, Taylor himself was in charge of the warehouse and strictly controlled who had access to it.[379] Sherif also testified that he heard Bockarie, Musa Cissé and Joe Tuah discussing their shares in the materiel, while Paul Molrbah stated that Taylor would distribute it.[380]

163. In addition to this evidence, TF1-371, Mongor, Saidu and Kanneh, among others, provided hearsay evidence as to events in Liberia and Burkina Faso, including Taylor's involvement in arranging the shipment and the fact that he was paid for the shipment with diamonds, based on what they were told by Bockarie.[381] The Trial Chamber further considered that "[p]arts of [the witnesses'] testimonies are also corroborated by reliable contemporary documentary evidence,"[382] particularly Exhibits P-063[383] and P-067.[384]

164. The Trial Chamber reviewed all of the evidence in reaching its conclusion, and stated:

> there is substantial credible evidence that [Taylor] was paid for the shipment with diamonds, that he sent Musa Cissé with the delegation, that he directed the distribution of the shipment, and that he kept some of it for his own purposes. In light of the foregoing the Trial Chamber finds that the

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> shipment of arms and ammunition brought to Sierra Leone in December 1998 came from Burkina Faso through Liberia, and that [Taylor] played a significant role in this transaction.[385]

165. Upon a review of the Trial Chamber's reasoning regarding its assessment of the reliability of the hearsay evidence in each of the 17 impugned findings where it is alleged to have been uncorroborated, the Appeals Chamber finds that none of the hearsay evidence referred to is uncorroborated, as each of the hearsay statements is supported by other evidence from a variety of sources.[386]

166. In regard to the Trial Chamber's alleged systematic failure to assess uncorroborated hearsay evidence, the Appeals Chamber reviewed the Trial Judgment for any examples of the Trial Chamber's reliance on uncorroborated hearsay evidence for the Trial Chamber's findings and found none. That review, on the contrary, reveals that the Trial Chamber on several occasions declined to make findings where the only evidence adduced was unsupported or uncorroborated hearsay evidence, including uncorroborated hearsay evidence that arose in the testimony of witnesses it otherwise found generally credible.[387]

(c) Conclusion

167. The Appeals Chamber concludes that the Trial Chamber properly applied the law in regard to the assessment of the reliability of hearsay evidence, including consideration of the presence or absence of other evidentiary support as one of many factors in making its assessment. There was no error.

3. Reliability of the Sources of Hearsay Evidence

168. In eight Grounds, the Defence alleges that the Trial Chamber failed to assess the reliability of the sources of the out-of-court statements on which it relied.[388]

(a) Submission of the Parties

169. The Defence generally asserts that the Trial Chamber systematically failed to consider the reliability of the out-of-court "sources" of the hearsay statements.[389] It specifically challenges evidence where it alleges that the source of the hearsay statement was Sam Bockarie, Benjamin Yeaten, Daniel Tamba or Ibrahim Bah.[390]

170. The Prosecution responds that the Trial Chamber assessed the reliability of the sources of hearsay evidence, as a function of circumstantial guarantees of trustworthiness.[391]

(b) Discussion

171. Benjamin Yeaten, Daniel Tamba, Ibrahim Bah and Sam Bockarie did not testify at the trial. They played significant roles in the acts about which the Trial Chamber received direct testimony. They also appear in the Trial Judgment as persons whom witnesses testified made representations as to Taylor's words and actions.[392] The Appeals Chamber notes that it is not the Defence case that the Prosecution could have reasonably called these individuals but failed to do so. Rather, the Defence avers that the Trial Chamber neglected to analyse their reliability, and that therefore evidence contained in the testimony of witnesses that ascribe statements implicating Taylor to these four declarants is not reliable.

172. On a review of the Trial Judgment, the Appeals Chamber finds that the Trial Chamber specifically reasoned why it accepted or rejected individual hearsay statements allegedly emanating from these four declarants. Examples abound where the Trial Chamber tested the statement by other supporting evidence, and reasoned extensively why it believed that Yeaten said what was attributed to him and why it was believable that Yeaten's out-of court statement that the supplies, information or instructions he was relaying came from Taylor.[393] The Trial Chamber similarly made careful findings on why Daniel Tamba's[394] and Ibrahim Bah's[395] relationship with Taylor was one of many factors it considered when deciding whether these declarants made the out-of-court statements ascribed to them by testifying witnesses,[396] and whether the content of those statements that they represented Taylor in transactions with the RUF/AFRC were reliable.[397]

173. Regarding Sam Bockarie, much of the Trial Judgment concerns and details the relationship between Taylor and Bockarie, as Bockarie was the leader of the RUF/AFRC, and the interlocutor with Taylor, throughout much

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of the Indictment Period. The Trial Chamber made numerous findings regarding Bockarie's acts and character,[398] the relationship between Bockarie and Taylor[399] and the relationship between Taylor and RUF/AFRC more generally.[400] The Trial Chamber made findings regarding communications between Taylor and Bockarie,[401] Bockarie's visits to Monrovia,[402] Taylor's and Bockarie's respective interests[403] and the advice and assistance that Taylor provided to Bockarie.[404] These findings were based in part on Bockarie's representations, heard by witnesses who testified before the Court. Each of the challenged findings was made by the Trial Chamber upon finding that it was supported by other evidence, including evidence regarding Bockarie and his relationship with Taylor,[405] before concluding that Bockarie made the statements to which the witnesses testified and that the statements were in fact reliable.

174. Because the Defence alleges that this error was "systematic," the Appeals Chamber reviewed the Trial Judgment for hearsay evidence of which these four declarants were the source but which the Defence did not cite. The review reveals nothing "systematic." In fact, not all statements attributed by witnesses to Bockarie and Yeaten were, after analysis of all the evidence, considered by the Trial Chamber to be reliable as to the truth of their content or the fact that they were uttered.[406]

175. The Appeals Chamber notes that in many instances, the declarant who was the source of the original statement challenged by the Defence is Taylor himself.[407] When the original declarant is the accused, no issue of the right of the accused to confront or cross-examine the original source arises. When, as in this case, the accused takes the witness stand, he has the opportunity to directly confront the statements attributed to him. Taylor took that opportunity and testified about the statements attributed to him.[408] Similarly, in some instances, the source of the hearsay statement reported by the in-court witness was Issa Sesay, who testified as a Defence witness and was questioned about the statements attributed to him.[409] The Trial Chamber extensively considered Taylor's testimony, including testimony relevant to the out-of-court statements he allegedly made, and included reasoning on the reliability of his testimony[410] and that of other defence witnesses in connection with its determinations on the use of the out-of-court statements.[411]

(c) Conclusion

176. From the foregoing, it is evident that the Trial Chamber considered the reliability of the sources of hearsay evidence as one of the factors it considered in its assessment of the reliability of the hearsay statement itself, and decided, based on all of the evidence, whether or not to accept the hearsay and use it in its findings. The evaluation of hearsay evidence by the Trial Chamber was careful and cautious, and in keeping with the rights of the parties preserved by the letter and spirit of the Statute. There was no error.

4. Inferences

177. In seven Grounds the Defence contends that the Trial Chamber erred by relying on inferences that were not the only reasonable conclusion that could be drawn from the evidence.[412]

(a) Submissions of the Parties

178. The Defence claims that the Trial Chamber made incriminating inferences that were not reliable because the evidence from which the inferences were derived also supported other reasonable inferences. The Defence asserts that "an inference must be more than simply 'reasonable' . . . it must be the *only* reasonable inference,"[413] and that "a circumstantial proposition is proven . . . only where it is 'the only reasonable inference based on the totality of the evidence.'"[414] It submits that the Trial Chamber drew unreliable inferences for: (i) four findings on planning;[415] (ii) six findings on Taylor's involvement in supplying arms and ammunition;[416] (iii) one finding on Taylor's provision of instructions and advice;[417] and (iv) one finding on the use of the Guesthouse to facilitate the transfer of diamonds for arms.[418]

179. The Prosecution addresses the evidence relied on by the Trial Chamber in reaching the impugned findings, arguing its sufficiency, and pointing out that the evidence in support of most of the findings in which the "inferences" are made is reasoned and is a mixture of direct and circumstantial evidence.[419]

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(b) Discussion

180. The Defence does not accurately state the law as set out in the cases on which it relies, or the caselaw of the Special Court. The cases relied on by the Defence are consistent with the Special Court's jurisprudence in *Fofana and Kondewa* and support the proposition that it is permissible to *base a conviction solely on circumstantial evidence*, provided that the only reasonable inference to be drawn from such evidence leads to the guilt of the accused.[420] When the evidence is capable of supporting a reasonable inference consistent with innocence, the accused must be acquitted.[421] As stated in *Sesay et al.*, the standard of proof at trial is the same regardless of the type of evidence, direct or circumstantial.[422] The principle of presumption of innocence, as protected by the standard of proof beyond a reasonable doubt, underpins the requirement that convictions based on inferences drawn exclusively from circumstantial evidence are proper only if the evidence is incapable of giving rise to a reasonable inference consistent with innocence.[423] If the circumstantial evidence on which the inference supporting the conviction relies also gives rise to a reasonable inference consistent with innocence, then there is obviously a reasonable doubt.[424]

181. The twelve findings which the Defence asserts to be unreliable inferences are conclusions drawn by the Trial Chamber resolving certain disputed facts, and most are based on a combination of direct and circumstantial evidence. None of these findings is conclusive in establishing any essential element of the crimes for which Taylor was convicted. The jurisprudence relied on by the Defence does not apply to the findings challenged by the Defence. The Prosecution must prove beyond a reasonable doubt every element of the offence charged. However, the Prosecution need not prove every disputed fact beyond a reasonable doubt. It is settled law that "not each and every fact in the Trial Judgement must be proved beyond a reasonable doubt, but only those on which a conviction or the sentence depends."[425]

(c) Conclusion

182. The principle of law is that it is permissible to base a conviction solely on circumstantial evidence, provided that the only reasonable inference to be drawn from such evidence leads to the guilt of the accused. That principle does not require that circumstantial evidence on disputed facts that are not decisive to the determination of guilt yield only one reasonable inference. The findings challenged by the Defence are not those on which a conviction or sentence depends nor are they all based solely on circumstantial evidence. The Appeals Chamber finds no error.

5. General Conclusion on Reliability

183. The Trial Chamber's assessment of the reliability of evidence was challenged only as to hearsay evidence and inferences. The Appeals Chamber is satisfied that the Trial Chamber engaged in a proper and careful approach to the assessment of the reliability of the evidence it used, in keeping with fairness, the spirit of the Statute and the general principles of law.[426]

F. Further Alleged Errors in Evaluation of Evidence and in Application of Burden and Standard of Proof

1. Evaluation of Evidence

184. The Defence contends in twelve Grounds that the Trial Chamber based its findings on insufficient evidence, failed to properly assess inconsistencies in the evidence and failed to consider relevant evidence.[427]

(a) Submissions of the Parties

(i) Insufficient Evidence

185. In five Grounds, the Defence contends that the Trial Chamber based its findings on insufficient evidence.[428] It avers that no reasonable trier of fact would find sufficient evidence to conclude that: (i) SAJ Musa's original plan was abandoned and Gullit's movements were incorporated into the Bockarie/Taylor Plan;[429] (ii) Bockarie was in frequent and daily contact via radio or satellite phone with Taylor in December 1998 and

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January 1999, either directly or through Benjamin Yeaten;[430] (iii) Bockarie gave Gullit orders to execute Martin Moinama, and a group of captured ECOMOG soldiers near the State House, and both orders were carried out by Gullit;[431] and (iv) in 1998 Taylor told Bockarie that the RUF/AFRC should construct or repair the airfield in Buedu.[432]

186. The Prosecution responds to Ground 10 that the Trial Chamber's finding on the abandonment of the SAJ Musa plan was based on a careful and reasonable evaluation of the totality of the evidence.[433] It further responds that the absence of the sort of evidence that the Defence suggests was required does not imply an absence of evidence to support the Trial Chamber's conclusion, and that in fact, the findings the Trial Chamber made were reasonably open to it.[434] For Ground 12, it responds that the Defence incorrectly represents the evidence that the Trial Chamber relied on, and that the finding made reflects the totality of the evidence that was before the Trial Chamber.[435] For Grounds 12 and 26, the Prosecution also responds that the Defence attempts to re-litigate the unsuccessful position put forward at trial and fails to establish any error.[436] For Ground 13, it responds that the Defence fails to explain why no reasonable trier of fact could have evaluated the evidence the way the Trial Chamber did.[437]

(ii) Inconsistent Evidence

187. In eight Grounds, the Defence contends that the Trial Chamber failed to acknowledge or to properly assess inconsistencies in the evidence on which findings were based.[438] The Defence submits that the Trial Chamber failed to acknowledge or properly assess inconsistencies in the evidence it used to support the following findings: (i) Rambo Red Goat was able to join Gullit's troops in Freetown some time after Gullit's forces had captured the State House;[439] (ii) Sam Bockarie and Taylor jointly designed the Bockarie/Taylor Plan, a two-pronged attack on Kono, Kenema and Freetown as the ultimate destination;[440] (iii) the possibility that SAJ Musa would participate in the execution of the Bockarie/Taylor Plan was contemplated by Bockarie and Taylor at the time they designed the Plan;[441] (iv) Bockarie was in frequent and daily contact via radio or satellite phone with Taylor in December 1998 and January 1999, either directly or through Benjamin Yeaten, and Yeaten travelled to Sierra Leone to meet with Bockarie in Buedu during this period;[442] (v) Taylor told Bockarie that the attack on Freetown should be "fearful" and that the RUF/AFRC should "use all means" in order to pressure the Government into negotiations for the release of Foday Sankoh;[443] (vi) on Bockarie's trip to Monrovia around March 1999, he brought back a large shipment of materiel supplied by Taylor;[444] and (vii) "448 messages"[445] were sent by Taylor's subordinates in Liberia with his knowledge alerting the RUF/AFRC when ECOMOG jets left Liberia to attack RUF/AFRC forces in Sierra Leone.[446]

188. The Prosecution addresses each of the assertions of inconsistent evidence in the grounds where each is argued, and submits that any inconsistencies in the testimonies of the witnesses on whom the Trial Chamber relied were minor and were properly taken into consideration by the Trial Chamber in its reasoning on its evaluation of the evidence.[447] It also points out that the evidence the Defence argues contradicts the Trial Chamber's findings is actually sometimes evidence of an unrelated event[448] or is not inconsistent at all.[449] Moreover, it submits that the Defence asserts the same inconsistent evidence as the basis for its challenges to several findings by the Trial Chamber, and that once these inconsistencies had been resolved and reasoned in the Judgement, the discussion did not need to be recalled every time the Trial Chamber accepted their testimony.[450]

(iii) Relevant Evidence

189. The Defence contends that the Trial Chamber failed to consider relevant evidence.[451] Specifically, it asserts that the Trial Chamber failed to address: (i) the testimony of Isaac Mongor regarding the Bockarie/Taylor Plan and attack on Freetown;[452] and (ii) Kabbah's testimony that one had to go to "the Hill" to get satellite phone reception, which the Defence asserts was contrary to the evidence the Trial Chamber accepted that Bockarie was able to speak to Taylor by satellite phone "on the veranda."[453]

190. The Prosecution responds that "[t]he three 'inconsistencies' in Mongor's evidence that [the Defence] alleges the Trial Chamber failed to consider were not inconsistencies at all."[454] It submits that "Mongor's evidence was properly considered by the Trial Chamber in the context of the totality of the evidence."[455] It does not specifically address the Defence's other point.

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(b) Discussion

191. The Appeals Chamber has repeatedly affirmed that the weight to be given to the evidence is within the Trial Chamber's discretion.[456] Trial Chambers enjoy broad discretion in their assessment of evidence and determination of the weight to accord testimony.[457] This is appropriate since, under the trial system adopted by the Special Court, the ICTY and the ICTR, it is the judges of the Trial Chamber who see and hear the witnesses and can best evaluate the evidence that they experience firsthand.[458] The Trial Chamber's assessment as to whether the weight of the evidence is sufficient to support a particular finding will only be disturbed if the Appeals Chamber determines that no reasonable trier of fact could reach the same conclusion.[459]

192. In reviewing the findings challenged for *insufficiency* of evidence, the Appeals Chamber notes that each finding is supported by evidence. The Trial Chamber carefully assessed the evidence supporting the impugned findings and reasoned why that evidence led to the finding that the Defence now challenges.[460] In each of its challenges to the sufficiency of the evidence, the Defence merely posits an alternative interpretation of the evidence and attempts to re-argue its case at trial before this Chamber, without showing any error on the part of the Trial Chamber. As the Appeals Chamber has previously emphasised, "an appellant must contest the Trial Chamber's findings and conclusions, and should not simply invite the Appeals Chamber to reconsider issues *de novo*."[461] Where an appellant merely seeks to substitute his own evaluation of the evidence for that of the Trial Chamber, such submissions may be dismissed without detailed reasoning.[462]

193. Determining the weight to be given to *discrepancies* between a witness's testimony and his prior statements is part of the Trial Chamber's discretion to assess the weight of the evidence.[463] "It is for the Trial Chamber to determine whether discrepancies discredit a witness' testimony and, when faced with competing versions of events, to determine which one is more credible."[464] A Trial Chamber may accept only part of a witness's testimony.[465] The Trial Chamber set out in its Judgment the method by which it determined and weighed discrepancies between witnesses and within individual witnesses' testimony. It also explained some of the factors it considered when making those determinations.[466] The Defence has not challenged that method.

194. The Defence asserts, however, that the Trial Chamber failed to assess inconsistencies when it weighed the evidence in support of ten challenged findings. The Appeals Chamber recalls that the Trial Chamber is not required to set out in detail why it accepted or rejected a particular testimony.[467] Having reviewed the Trial Judgment in light of the Defence's assertions, however, the Appeals Chamber concludes that, to the extent that there were inconsistencies in the evidence challenged by the Defence, the Trial Chamber consistently and carefully acknowledged them and explained how it assessed those discrepancies and inconsistencies in weighing the evidence.[468]

195. The Defence further asserts that the Trial Chamber *failed to consider*, and hence erroneously gave no weight at all to, two relevant points on which it received testimony which was contrary to its findings. The Appeals Chamber notes that a Trial Chamber is not required to refer to the testimony of every witness or every piece of evidence on the trial record.[469] Nevertheless, a review of the Trial Judgment shows that the first point raised by the Defence was in fact considered in the Trial Judgment.[470] The second point was not addressed in the Trial Judgment, but the evidence cited by the Defence neither supports its argument that it contradicts the Trial Chamber's finding nor shows that the Trial Chamber's finding was unreasonable.[471]

(c) Conclusion

196. A Trial Chamber should not abuse its broad discretion in weighing evidence by making findings determinative of guilt in the absence of evidence, or in the absence of reasoned acknowledgment of evidence contrary to the findings. In this case, on review of the Trial Judgment as a whole, as well as the findings specifically challenged by the Defence, the Appeals Chamber concludes that the Trial Chamber supported its findings with evidence. It identified contradictory evidence, while providing reasons why it was not persuasive. The Appeals Chamber finds no error in the manner in which the Trial Chamber undertook to weigh the evidence.

2. Burden of Proof

197. The Defence argues in three Grounds that the Trial Chamber impermissibly reversed the burden of proof.[472]

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(a) Submissions of the Parties

198. The Defence submits in Ground 4 that the Trial Chamber erred in law by placing on the Defence the onus to disprove various facts found by the Trial Chamber.[473] It contends that, as the "boilerplate" language used at the beginning of a trial judgment is often a poor indicator of the actual standard applied by the judges to the evidence, appellate review requires a close examination of the language used and reasoning adopted in respect of specific factual findings.[474] In Ground 4, the Defence further provides ten examples of what it considers to be a reversal of the burden of proof.[475] The Defence submissions imply that by using language such as "does not exclude the possibility" and "does not preclude," the Trial Chamber placed on the Defence the burden of producing evidence which not only creates a reasonable doubt, but that "precludes" or "excludes" the possibility of Taylor's guilt. It submits that the examples presented under Ground 4 are not exhaustive and are supplemented in other Grounds of Appeal.[476] However, it only raises this issue again in relation to two additional examples, in Grounds 12 and 23 respectively.[477]

199. The Prosecution responds that the Defence often misunderstands or misinterprets the Trial Chamber's language and cites it out of context.[478] It submits that language used in a judgment is not the only way to determine whether the Judges applied the correct burden of proof, and that this, rather, represents only the starting point of any such analysis.[479] It also submits that the Trial Chamber correctly set out the standard and the burden of proof at paragraphs 158 and 159 of its Judgment.

(b) Discussion

200. Article 17(3) of the Statute enshrines the principle of the presumption of innocence in providing that an accused shall be presumed innocent until proved guilty.[480] The principle is reflected in Rule 87(A), which establishes that a finding of guilty may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond a reasonable doubt. In keeping with the spirit of the Statute, the accused has no obligation to prove anything and may rely on the presumption of innocence throughout the trial and the Judges' deliberations; and the burden is placed on the Prosecution to prove beyond a reasonable doubt every element of the crimes and the forms of criminal participation charged.[481]

201. In its Judgment, the Trial Chamber recalled the Statute and the applicable rules establishing the presumption of innocence, the standard of proof and the burden of proof required of the Prosecution.[482] It stated:

> [I]n respect of each count, the Trial Chamber has determined whether it is satisfied, on the basis of the whole of the evidence, that every element of that crime and the criminal responsibility of the Accused for it have been established beyond reasonable doubt. There is no burden on an accused to prove his innocence. Article 17(4)(g) of the Statute provides that no accused shall be compelled to testify against himself or confess guilt.[483]

202. In addition, it explicitly emphasized that the burden never shifts to the accused:

> The Accused elected to testify in his own defence. In accordance with Rule 85(C) of the Rules, he gave his evidence under oath and thereafter called other witnesses in his defence. By electing to testify and to call witnesses in his Defence, the Accused did not thereby assume the burden of proving his innocence.[484]

203. The Defence refers to this as "boilerplate" and suggests that it is a "poor indicator" of what the Trial Chamber actually did.[485] The Appeals Chamber, however, considers that the Trial Chamber's statements of the law and how it applied it are not mere surplusage. The Appeals Chamber holds that these statements are a transparent declaration of the standard it applied to determine whether Taylor is guilty as to each element of each count charged. The Trial Chamber need not repeat the law each time it makes a finding that an essential element of the offense or criminal responsibility has been proved. The Defence submits that the Trial Chamber misrepresented the standard of proof it actually required for conviction as well as its actual allocation of the burden of proof.[486] This is a serious allegation, and the Appeals Chamber therefore reviews each of the examples provided by the Defence in support of this assertion.

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204. In Ground 4, the Defence posits ten examples of what it considers to be reversals of the burden of proof: two are discussed and eight are simply listed. Two additional examples are discussed in Grounds 12 and 23.

205. In the two examples discussed in Ground 4, the Defence submits that the Trial Chamber improperly reversed the burden of proof when it found that the testimony of two witnesses, TF1-567[487] and Mohamed Kabbah,[488] did not "negate the possibility"[489] that a larger plan, which included an attack on Freetown, was discussed at a meeting that the witnesses did not attend. It characterises this as "discounting" the evidence of the two witnesses and asserts that the Trial Chamber placed a burden on the Defence to produce evidence to overcome the "possibility" that a larger plan existed and was discussed at a different meeting.[490]

206. What the Defence alleges the Trial Chamber found is not the Trial Chamber's actual finding. The finding to which the Defence refers is set out fully as follows:

> On the basis of the aforementioned evidence, the Trial Chamber finds *that the plan presented at the Waterworks meeting* was for a two pronged attack on Kono and Kenema, with Freetown as the ultimate destination.[491]

The Defence does not mention that the finding actually relates only to "the plan presented at the Waterworks meeting," and not to the plan generally, or to the plan as explained at other times and places.

207. Contrary to the Defence assertion, the Trial Chamber did not "discount" the two witnesses' testimony. It considered their testimony, and reasoned why it was not inconsistent with the testimony of those several other witnesses, whose evidence is discussed in the preceding paragraphs of the Judgment and who testified that Bockarie had related to them at the Waterworks meeting a plan for a two-pronged attack which included Kono and Freetown as targets.[492] The Trial Chamber reasoned that the evidence of TF1-567 and Kabbah did not contradict those other witnesses because TF1-567 testified about a conversation with Bockarie "in Buedu when Bockarie returned from Monrovia in December 1998," and did not say he attended the Waterworks meeting; and Kabbah related a conversation with a person named Zedman and stated that he did not attend the Waterworks meeting.[493]

208. The Trial Chamber did not, as suggested by the Defence, find the "mere possibility" that a plan which included an attack on Freetown as the ultimate destination was discussed at the Waterworks meeting, nor did it place a burden on the Defence to rebut that possibility. It found beyond a reasonable doubt, on evidence it recited, considered and believed, that the Bockarie/Taylor Plan was discussed at the Waterworks meeting.[494] It also reasoned that the testimony of TF1-567 and Kabbah did not give rise to any doubt because their testimony did not contradict the evidence on which the Trial Chamber ultimately based its finding. There was no shift in the burden of proof.

209. In four[495] of the eight examples which the Defence lists as representative of the Trial Chamber's error in reversing the burden of proof, it is evident from the statements themselves, as well as the context in which they appear, that rather than shifting the burden to the Defence, the Trial Chamber was offering a reasoned explanation as to why it did not find evidence to be contradictory or inconsistent with other evidence before it.[496]

210. One[497] of the eight examples is an acknowledgement by the Trial Chamber that it had considered conflicting evidence, but nonetheless concluded that other evidence was more reliable. This is clear when viewed in the context of the entire paragraph:

> In view of the inconsistencies in Sesay's evidence in this instance and its findings that neither Sesay nor Vincent are generally credible witnesses, the Trial Chamber does not consider that their evidence *raises a reasonable doubt as to the possibility that Taylor sent Keita to Sierra Leone*.[498]

211. The Defence cites a sixth alleged example in the paragraph in the Trial Judgment that immediately follows.[499] However, the context makes it clear that the Trial Chamber was properly reasoning how it weighed the evidence, and why the Trial Chamber considered that the evidence that Taylor sent Keita to Sierra Leone was not inconsistent with the evidence given by Mongor and TF1-367.[500]

212. The final two examples[501] are somewhat ambiguous in the extracts cited by the Defence, but when read in context, it is clear that they are reasoned explanations for the Trial Chamber's rejection of the arguments raised by the Defence at trial. In the excerpts below, the statements challenged by the Defence are italicized.

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> The Defence submits that it is significant that neither Exhibit D-009, Bockarie's salute report, nor Exhibit P-067, the RUF's situation report make any reference to Tamba supplying the RUF with arms and ammunition. The Defence also relies on Issa Sesay's testimony that although he was not stationed in Kenema at the time the ammunition allegedly came to Kenema in 1997, he used to go to Kenema and if Jungle did deliver materiel, Sesay would have been told by Bockarie.[502]
>
> The Trial Chamber considers *that neither TF1-585's failure to personally see Jungle bring ammunition during 1997 nor the lack of reference in Exhibits D-009 or P-067 to Tamba supplying the RUF is conclusive of the non-occurrence of this event*. TF1-585 acknowledged that Jungle did visit Kenema frequently during 1997, but that at the time, she was not privy to the purpose of his visits. She also testified that she was not in Kenema during the entire duration that Bockarie was stationed there. It is likely that at this time when Jungle was not frequently delivering materiel to the RUF, the witness would have been unaware of the transportation of a single consignment of materiel. On similar grounds, the Trial Chamber does not consider Bockarie's failure to tell Sesay about a delivery of supplies to Kenema dispositive of whether it did or did not occur. In relation to the salute reports, the Trial Chamber notes that in Exhibit D-009, Bockarie's indication that he would not disclose his sources of supplies in the salute report for security reasons, provides an explanation for why accounts of Jungle delivering materiel would not appear in that report.[503]

And

> The Trial Chamber also recalls its earlier finding that Issa Sesay's evidence on matters beyond the basic facts and sequence of events in the Sierra Leonean civil war must generally be considered with caution. Despite his claim that he was a close friend of Tamba's, his evidence that during this period Jungle did not bring materiel from Liberia is contradicted even by one of the Defence witnesses, John Vincent, who states that he was aware that Tamba was making regular trips between Buedu and Liberia to transport ammunition in 1998. In light of the overwhelming evidence by Prosecution witnesses the Trial Chamber finds that Sesay's denial that Daniel Tamba, Marzah and Sampson were not bringing materiel supplies to the RUF from the Accused is not credible.[504]
>
> The Defence also refers to the lack of a 'general picture of arms and ammunitions shipments going from or through Liberia to Sierra Leone at this time' from any of the witnesses, suggesting that the transportation of arms across borders was conducted in a 'rather haphazard manner' rather than an 'organised, presidentially-directed one.' The Defence cites in particular the fact that Marzah did not know Sherif to be involved in the transportation of arms and ammunition to the RUF, despite the fact that both witnesses were senior figures in the SSS. *The Trial Chamber does not consider the lack of co-operation amongst the intermediaries engaged in supply to be dispositive of the Accused's non-involvement or non-awareness*.[505]

Given the paragraphs in which the words "dispositive" and "conclusive" appear, the Appeals Chamber concludes that the use of those words does not suggest that the Trial Chamber engaged in any shifting of the burden of proof.

213. A further Defence example of an "almost-textbook burden shift by the Chamber"[506] is what the Defence characterised as a "conclusion to disregard Mr. Taylor's direct evidence."[507] In Ground 12, the Defence avers that the Trial Chamber stated that "'in light of these inconsistencies and against the weight of the Prosecution evidence, Mr. Taylor's evidence was not credible."[508] The Defence argues that "[t]he credibility of Defence evidence does not depend on whether it is inconsistent with any or all of the Prosecution evidence."[509]

214. The phrase to which the Defence objects must be read in the context of the section in which it appears. First, the phrase does not refer to an assessment of Taylor's credibility as a witness generally or to the reliability of all of the evidence presented by Taylor. It refers specifically to the reliability of Taylor's testimony on one issue: whether he, or Yeaten acting on his behalf, was in contact by satellite phone and radio with Bockarie in the period leading up to and through the Freetown Invasion.[510] Second, the inconsistencies to which the statement refers were not, as the Defence states, "inconsistencies with any or all of the prosecution evidence."[511] They were inconsistencies within Taylor's own sworn testimony, which the Trial Chamber identified and considered.[512]

215. Third, the entire section *prior to* the paragraph containing the impugned phrase is devoted to weighing the Prosecution's evidence.[513] In three paragraphs, the Trial Chamber recites the evidence from five Prosecution witnesses about frequent radio and satellite phone conversations between Taylor/Yeaten and Bockarie during the operative time.[514] In six paragraphs, it records its consideration and resolution of any inconsistencies or contradictions

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within or between the Prosecution witnesses' evidence.[515] Two paragraphs immediately before the paragraph containing the impugned phrase, the Trial Chamber set out reasoning for finding the Prosecution witnesses' testimony reliable:

> Reviewing the reliability of the evidence concerning communications between Bockarie and the Accused or Yeaten during the Kono and Freetown operations, the Trial Chamber takes into account that much of the evidence adduced was from radio operators in Buedu during the relevant time period, and that the witnesses were careful to substantiate the basis on which they believed such communications took place. These radio operators were either monitoring or facilitating such radio communications with Liberia, present in the radio room when such communications occurred, or present when Bockarie spoke on the satellite phone with Yeaten or the Accused.[516]

216. It is only after analyzing the Prosecution evidence that the Trial Judgment turns to an analysis of Taylor's evidence. It finds that Taylor's testimony contains within itself inconsistencies that are irreconcilable and that the testimony is not credible.[517] Thereafter, the Trial Chamber states:

> The Trial Chamber is satisfied that in December 1998 and January 1999, Bockarie was in frequent contact via radio or satellite phone with the Accused, either directly or through Yeaten, in relation to the progress of the Kono and Freetown operations.[518]

217. In Ground 23, the Defence gives one additional example of what it alleges to be the Trial Chamber's shifting of the burden of proof. It points to the Trial Chamber's statement that it was "'not implausible' that the ammunition lasted from early 1998 to October 1998."[519] It alleges that it was prejudiced by "[s]hifting the burden onto the Defence to prove the relative significance of these various sources," and that "[i]t was rather for the Prosecution to prove that these other sources were so insubstantial as to exclude any reasonable possibility that those supplies, rather than those in the Magburaka shipment, were used in crimes."[520]

218. When read in context the meaning of the term "not implausible," about which the Defence complains, is shown to be different from what the Defence alleges.[521] The Trial Chamber was addressing the Defence's challenge to the testimony of Prosecution witness Bobson Sesay.[522] The Defence specifically argued that Bobson Sesay's testimony was "implausible" when he said that the weapons from a particular shipment had lasted long enough to be used as late as October 1998.[523] In considering this contention made by the Defence at trial, the Trial Chamber listed the evidence that supported Bobson Sesay's testimony, as well as its finding as to Bobson Sesay's credibility, to explain why it found the testimony was not "implausible."[524]

(c) Conclusion

219. The Defence's examples of "burden shifting" are each derived from the Trial Chamber's discussions about how it weighed and balanced individual pieces of evidence. None of them is inconsistent with the Trial Chamber's declaration at the outset of the Judgment that "[t]here is no burden on an accused to prove his innocence."[525]

3. Standard of Proof

220. The Defence argues in three Grounds that the Trial Chamber failed to apply the proper standard of proof.[526]

(a) Submissions of the Parties

221. The Defence argues that in some parts of the Judgment, the Trial Chamber abandoned the standard of proof beyond a reasonable doubt and substituted a "likely" standard.[527] It avers that the Trial Chamber relied on facts that it only considered were "likely", instead of rejecting those facts because they had not been proved beyond a reasonable doubt.[528] In support of its assertion that the Trial Chamber applied a standard less stringent than the standard of proof beyond a reasonable doubt in convicting Taylor, the Defence provides three examples of what it describes as the "likely" standard. Grounds 4, 8 and 23 allege that the Trial Chamber applied a "likely" or "possible" standard of proof rather than proof beyond a reasonable doubt to its findings on: (i) the use of arms and ammunition from the Magburaka Shipment (provided by Taylor) in the commission of crimes by the RUF/AFRC between the Intervention and the end of March 1998; (ii) the use of arms provided by Taylor in the crimes committed

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in the withdrawal after the Freetown Invasion in 1999; and (iii) whether the Bockarie/Taylor Plan for the attack on Freetown contemplated the participation of the troops under the command of SAJ Musa and Gullit.[529]

222. The Prosecution responds that the Defence misstates the Trial Chamber's findings and takes them out of context, and that the Trial Chamber consistently applied the correct standard of proof.[530]

(b) Discussion

223. According to the Defence, in referring to crimes committed in Operation Pay Yourself and crimes committed in Kono during the first half of 1998, the Trial Chamber found "that it was merely 'likely' that the Magburaka shipment was used in [those] crimes."[531]

224. This submission confuses the Trial Chamber's findings with its reasoning. The Trial Chamber did not find "that it was merely 'likely' that the Magburaka shipment was used in [crimes committed in Operation Pay Yourself and Kono]."[532] The actual finding is:

> The Trial Chamber also *finds beyond reasonable doubt* that weapons from the Magburaka shipment were used in the Junta mining operations at Tongo Fields prior to the ECOMOG Intervention, *in both "Operation Pay Yourself" and subsequent offensives on Kono*, as well as the commission of crimes during those operations.[533]

225. The word "likely" appears in the *reasoning* of the Trial Chamber:

> As there is no evidence that the Junta obtained further materiel after the Magburaka shipment in late 1997 [Junta period] or that the RUF/AFRC were able to capture a significant amount of supplies in the retreat from Freetown, *it is likely that the only supplies that the retreating troops had access to were from the Magburaka shipment*.[534]

226. The likelihood discussed in this sentence is limited to the likelihood that the Magburaka Shipment was the exclusive source of arms and ammunition used in these crimes, not the likelihood that it was *a* source.[535] This sentence appears as part of several paragraphs of reasoning[536] regarding the uses made of the Magburaka Shipment, which the Trial Chamber had already found beyond a reasonable doubt was supplied by Taylor,[537] including the use of materiel from that shipment in the commission of crimes during the retreat from Freetown in February 1998 after the Intervention. The Trial Chamber did not make a finding beyond a reasonable doubt that the Magburaka Shipment was the sole source of arms used by the RUF/AFRC between February and June 1998, nor was it required to do so in order to establish an element of the offence.[538]

227. As the Appeals Chamber stated above,[539] the standard of proof beyond a reasonable doubt is applied to the elements of the crime or the form of responsibility alleged against the accused, as well as with respect to the facts which are indispensable for entering a conviction.[540] Consequently, not every fact in the Trial Judgement must be proved beyond a reasonable doubt, but only those facts on which a conviction or the sentence depends.[541] The Trial Chamber is not required to resolve every disputed fact beyond a reasonable doubt. The Trial Chamber applied the requisite standard of proof to its findings.

228. The Defence repeats the same mistake in its second allegation that the Trial Chamber used a "likely" standard of proof, this time in connection with the disputed question regarding the use of arms supplied by Taylor in the withdrawal after the Freetown Invasion, in 1999. It asserts that, as an ultimate finding, the Trial Chamber concluded that it was only "likely that Bockarie's forces provided resupply of materiel to Gullit's forces during the withdrawal from Freetown in early 1999."[542]

229. The actual finding reads:

> The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that the Burkina Faso shipment, the materiel captured from the December 1998 offensives in Kono and the shipment brought by Dauda Aruna Fornie together formed an amalgamate of fungible resources which was used in attacks by the RUF and AFRC on the outskirts of Freetown after the withdrawal of Gullit's forces from the city, and in the commission of crimes in the Western Area.[543]

230. The phrase in which the word "likely" appears reads:

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> Issa Sesay denied that the RUF sent reinforcements or ammunition to the AFRC forces while they were retreating from Freetown. The Trial Chamber recalls its previous finding that Issa Sesay's evidence as to whether there was coordination between Bockarie's forces and Gullit's forces as the latter retreated from Freetown is not credible and is outweighed by the consistent evidence of Prosecution witnesses that there was such cooperation in which Sesay himself was involved. Having found that troops under Bockarie's command and Gullit's forces made collaborative efforts to re-attack Freetown, including joint attacks on the outskirts of Freetown, *the Trial Chamber considers it likely that the former also supplied the latter with additional ammunition.* The Trial Chamber does not therefore accept Issa Sesay's denial that he brought reinforcements or ammunition to the AFRC forces that retreated from Freetown.[544]

231. The Trial Chamber was not making a finding of fact on an element of the offence, but was reasoning the credibility of Issa Sesay against that of Bobson Sesay, whose testimony the Trial Chamber summarised in the paragraph immediately preceding.

> In relation to whether the Burkina Faso shipment reached Gullit's forces, the Prosecution also relies on Bobson Sesay's evidence that in the third week of January 1999 when Gullit's forces retreated from Freetown, Issa Sesay arrived on the outskirts of Freetown to provide reinforcements for a planned second attack on Freetown. He distributed ammunition to the fighters who reinforced the troops at Macdonald and they used this ammunition to attack Tombo village.[545]

232. The Trial Chamber then explained that it examined its previous findings (which included findings on the Freetown Invasion and withdrawal,[546] and the credibility analyses of the two witnesses[547]), and determined that it would accept Bobson Sesay's evidence as reliable.[548] From that evidence, weighed with other evidence also carefully reasoned, the Trial Chamber found beyond a reasonable doubt the facts recited in paragraph 5721, quoted above.

233. The Defence asserts a third time that the Trial Chamber applied a standard of proof less than that of proof beyond a reasonable doubt based on the Trial Chamber's use of the word "possibility."[549] The phrase is as follows:

> [T]he Trial Chamber finds that the possibility that SAJ Musa would participate in the execution of the plan was contemplated by Bockarie and [Taylor] at the time they designed the plan.[550]

234. In this instance, the Defence has simply misunderstood the context in which the Trial Chamber used the word. The Trial Chamber was observing that the Bockarie/Taylor Plan contemplated the participation of SAJ Musa, and the troops he commanded, in the execution of the Plan. The Trial Chamber found that when SAJ Musa died and Gullit assumed command, that part of the Plan continued to be pursued with SAJ Musa's replacement, Gullit.[551] It found that the "possibility" contemplated by the Plan was realised when Gullit agreed that he and his fighters would join with Bockarie.[552] Although the Defence disputed that conclusion at trial, and raises the same arguments on appeal, its challenge as to the application of the proper standard of proof must fail.

(c) Conclusion

235. The Appeals Chamber concurs with the ICTY Appeals Chamber that:

> The task of a trier of fact is that of assessing all the relevant evidence presented with a holistic approach and that a trier of fact should render a reasoned opinion on the basis of the entire body of evidence and without applying the standard of proof beyond reasonable doubt with a piecemeal approach.[553]

236. The Defence has failed to show that the Trial Chamber deviated from the application of the standard of proof beyond a reasonable doubt in reaching those findings for which that standard is required.

4. General Conclusion on Further Alleged Errors in Evaluation of Evidence and in Application of Burden and Standard of Proof

237. The Trial Chamber committed no error in the manner in which it evaluated the evidence. It properly allocated to the Prosecution the burden of establishing its charges by proof beyond a reasonable doubt, did not shift that burden and did not require the Defence to prove Taylor's innocence. The Trial Chamber properly articulated

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the standard of proof required to overcome the presumption of innocence, and applied that standard when concluding that the essential elements of the crimes and individual criminal liability had been proved beyond a reasonable doubt. The Appeals Chamber finds no error.

G. Alleged Errors in Adjudicated Facts

238. In Ground 6, the Defence challenges the procedure by which the Trial Chamber found that the accuracy of an adjudicated fact that had been admitted into evidence was challenged. The question of law presented by that challenge has been addressed above.[554] The Defence also claims that it was prejudiced by the lack of notice and opportunity to present additional evidence,[555] and that challenge is discussed below.

(a) Submissions of the Parties

239. The Defence submits that it was prejudiced because the Trial Chamber failed to give it notice and an opportunity to produce evidence when it concluded during deliberations that the presumption of accuracy of an adjudicated fact had been rebutted by the weight of other evidence.[556] The Prosecution responds that the Defence expressly recognised that the Trial Chamber intended to evaluate the adjudicated fact at the conclusion of the evidence and weigh it against all of the evidence, and that it expressly acknowledged that there was evidence capable of contradicting it that had already been admitted.[557]

(b) Discussion

240. The Appeals Chamber has concluded above that once admitted by the Trial Chamber, an adjudicated fact and its attending presumption of accuracy, is a piece of evidence that can be considered and evaluated by the Trial Chamber, along with all the other evidence as well as the presumption of innocence, during the deliberation process.[558] This is what the Trial Chamber did, and the Trial Chamber reasoned how it had evaluated the evidence and why the presumption of accuracy was rebutted by Prosecution evidence.[559]

241. The Appeals Chamber concludes that there has been no prejudice to the Defence for lack of notice. The Defence acknowledged at trial that it was on notice that the Prosecution had led evidence prior to the introduction of the adjudicated facts, which challenged the accuracy of the Defence's interpretation of Adjudicated Fact 15.[560] It argued then that evidence previously led by the Prosecutor could be considered by the Trial Chamber at the conclusion of the case along with the presumption of accuracy of the adjudicated finding, "as only one more factor to consider when weighing all the evidence. . . ."[561] It cannot now claim that it has been prejudiced or surprised because the Trial Chamber did exactly what the Defence argued it should have done. This conclusion is further supported by the Defence's failure either to identify in its submissions any evidence it would have brought before the Trial Chamber to counter the impugned finding or to seek to bring such evidence before the Appeals Chamber in a Rule 115 motion.[562]

(c) Conclusion

242. The Defence suffered no prejudice as a result of the Trial Chamber's assessment of Adjudicated Fact 15 at the conclusion of the trial during deliberations.

H. Alleged Failure to Provide a Reasoned Opinion

243. The Defence alleges in five Grounds that the Trial Chamber failed to provide a reasoned opinion.[563]

(a) Submissions of the Parties

244. In three Grounds, the Defence submits that the Trial Chamber failed to "provide a fully reasoned opinion" and "be especially rigorous" in its evaluation of the evidence.[564] In two Grounds, the Defence argues that the Trial Chamber misrepresented the testimony of certain witnesses on which it relied.[565] The Defence also argues in one Ground that the Trial Chamber made contradictory findings, and that the Trial Chamber's reasoning was illogical.[566]

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245. The Prosecution responds that the Defence attempts to substitute its alternative interpretations of the evidence. It relies on the Appeals Chamber's holding in *Sesay et al.* that "claims that the Trial Chamber . . . should have interpreted evidence in a particular manner, are liable to be summarily dismissed."[567] It contends that the Trial Chamber did not mischaracterise the evidence, and that it accurately quoted the disputed testimony.[568]

(b) Discussion

246. A reasoned opinion ensures that the accused can exercise his right of appeal and that the Appeals Chamber can carry out its statutory duty under Article 20 to review the Parties' appeals.[569] In general, a Trial Chamber "is not required to articulate every step of its reasoning for each particular finding it makes, nor is it required to set out in detail why it accepted or rejected a particular testimony."[570] Nonetheless, in this case, the Trial Judgment extensively set out the Parties' submissions at trial on each allegation (in the sections entitled "Submissions of the Parties"),[571] the evidence relevant to each allegation (in the sections entitled "Evidence"),[572] the Trial Chamber's evaluation of that evidence (in the sections entitled "Deliberations")[573] and the Trial Chamber's ultimate findings based on its assessment of the relevant evidence (in the sections entitled "Findings").[574] This deliberate and detailed approach has unquestionably facilitated the Appeals Chamber's review of the Trial Chamber's reasoning and findings in light of the Parties' submissions,[575] and the Appeals Chamber commends the Trial Chamber's methodology as a best practice.

247. An appellant claiming an error of law on the basis of lack of a reasoned opinion must identify the specific issues, factual findings or arguments which the appellant submits the Trial Chamber omitted to address and explain why this omission invalidated the decision.[576] As a general rule, a Trial Chamber is only required to make findings on those facts that are essential to the determination of guilt in relation to a particular count.[577]

248. The Defence submissions fail to properly plead a failure to provide a reasoned opinion, as they do not explain why the alleged omission invalidates the decision. In such circumstances, the Appeals Chamber can only review whether the challenged findings are *prima facie* essential to the determination of Taylor's guilt. As they are not, the Defence submissions must fail.

(c) Conclusion

249. The Defence submissions are dismissed.

I. Conclusion on Evidentiary Submissions

250. The Statute and Rules create a framework for evidentiary assessment that is flexible while principled. Under this Court's jurisprudential application of the constitutive framework, the Trial Chamber has the primary obligation to assess and weigh evidence, and is given broad discretion to do so. However, that discretion is not limitless, as the Trial Chamber is required to carefully and cautiously assess the totality of the evidence on the record, in accordance with the fundamental principles of the presumption of innocence and the fairness of the proceedings. It is the Trial Chamber's essential obligation to rigorously evaluate evidence for its credibility and reliability, and strictly apply the standard of proof beyond a reasonable doubt when determining the sufficiency of the evidence supporting a conviction. Flexibilty in evidentary assessment places the responsibility on the Trial Chamber to approach all evidence cautiously and carefully, and to reason its evalaution of evidence cogently, rather than relying on formulas and proscriptions that lead to unreasoned or categorical acceptance or rejection of evidence. In this regard, the Trial Chamber fulfilled its obligation.

251. The Appeals Chamber holds that the Defence legal challenges, both those asserting pure errors of law and those asserting systematic errors of fact amounting to errors of law, put forward positions that are not consistent with the Statute, the Rules and this Chamber's jurisprudence.

252. In light of the foregoing, the Evidentiary Submissions are dismissed in their entirety.

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V. THE RUF/AFRC'S OPERATIONAL STRATEGY

A. The Trial Chamber's Findings

253. The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment,[578] which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government (the "Operational Strategy").[579]

254. In assessing Taylor's alleged criminal liability, the Trial Chamber found that Taylor, by his acts and conduct, was "critical in enabling" the RUF/AFRC's Operational Strategy, "supported, sustained and enhanced" the functioning of the RUF/AFRC and its capacity to implement its Operational Strategy, planned an attack of terror as the *modus operandi* of the attack on Freetown and had a substantial effect on the crimes committed by the RUF/AFRC.[580] It further found that Taylor knew of the RUF/AFRC's Operational Strategy, knew that his acts and conduct assisted the commission of crimes in the implementation of that Operational Strategy and knew the essential elements of the crimes in which he was participating.[581]

B. Submissions of the Parties

255. In Ground 17, the Defence contends that the Trial Chamber erred in fact in finding that the RUF/AFRC's Operational Strategy "was characterized by a campaign of crimes against the Sierra Leonean population."[582] It submits that no reasonable trier of fact could have found that the RUF/AFRC had an operational strategy to commit crimes during the Junta Period,[583] in 1998[584] and from 1999 onwards.[585] First, it argues that the Trial Chamber's "own findings show that RUF/AFRC soldiers, rather than implementing a continuous policy to commit crimes, tended to commit crimes opportunistically and when pushed to the brink of defeat," and that at other times crimes were committed "sporadically."[586] It contends that "crimes did occur on other occasions, but they were far less notorious, severe and widespread."[587] Second, it submits that the Trial Chamber erred in finding that the RUF/AFRC leadership adopted a policy to commit crimes.[588] Third, it argues that the Trial Chamber erred in finding that the RUF/AFRC had a continuous strategy to commit crimes throughout the Indictment Period.[589]

256. The Prosecution responds that the Trial Chamber reasonably and correctly found that the RUF/AFRC had an operational strategy to commit crimes which lasted throughout the Indictment Period.[590] It submits that the Defence merely seeks to substitute its own characterisation of the facts for that of the Trial Chamber, and fails to establish any error warranting appellate intervention.[591] It argues that the Trial Chamber found that the RUF/AFRC committed crimes during the entire Indictment Period,[592] including acts of terrorism,[593] enslavement[594] and sexual violence,[595] and committed the crimes of conscription and use of child soldiers between November 1996 and 2000.[596] It further contends that the "crimes spanned seven of Sierra Leone's twelve provincial districts plus Freetown and the Western Area, and were 'some of the most heinous and brutal crimes recorded in human history.'"[597]

C. Discussion

257. Under this Court's jurisprudence, the Trial Chamber was not legally required to make findings on the RUF/AFRC's Operational Strategy in order to establish the crimes that were committed and Taylor's criminal responsibility.[598] However, an organisation's policy, plan or strategy may, of course, be relevant in determining criminal liability for crimes under the Statute.[599] The Appeals Chamber considers that the Trial Chamber used the terms "operational" and "strategy" according to their plain meaning: "operational" relates to operations or activities, in this case the activities of the RUF/AFRC, while a "strategy" is a plan or policy to achieve an aim, in this case the RUF/AFRC's strategy to achieve its military and political goals.

258. In reaching its finding on the RUF/AFRC's Operational Strategy, the Trial Chamber explicitly considered the pattern of crimes against civilians that were committed,[600] the involvement of leaders and commanders in ordering, directing or organising the commission of crimes[601] and the purpose or ends of the crimes.[602] The Defence

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does not challenge this approach, and similarly addresses its submissions to the pattern of crimes and the involvement of the RUF/AFRC leadership. The Appeals Chamber considers that the Trial Chamber's approach was appropriate.

259. In reviewing the Trial Chamber's finding, the Appeals Chamber will consider whether the Trial Chamber's findings reasonably demonstrate: first, a consistent pattern of crimes against civilians, as opposed to the opportunistic and sporadic commission of crimes; second, the RUF/AFRC leadership's involvement in organising, directing and perpetrating crimes; and third, that the commission of crimes was directed to achieve the RUF/AFRC's political and military goals. As the Trial Chamber found that the primary—although not exclusive—criminal *modus operandi* of the RUF/AFRC's Operational Strategy was the use of terror against the civilian population, the Appeals Chamber will particularly review the Trial Chamber's findings in that light. Finally, the Appeals Chamber will consider whether these factors are demonstrated throughout the Indictment Period, as the Defence submits that any Operational Strategy was not continuous.

1. Enslavement, Sexual Slavery, Sexual Violence and Child Soldiers

260. The Trial Chamber found that the commission of crimes charged in all Counts of the Indictment, including rapes, sexual slavery, abductions, forced labour and conscription of child soldiers, was part of the RUF/AFRC's Operational Strategy.[603] It made numerous findings linking the RUF/AFRC's Operational Strategy to crimes committed to support and sustain the RUF/AFRC's activities. It found that the RUF/AFRC established a criminal system of abducting and controlling civilians in the forms of sexual slavery, forced marriage, forced mining, forced farming, domestic labour, forced recruitment and other forced labour.[604] It further found that these crimes against civilians formed part of a continuous campaign directed against civilians in communities that the RUF/AFRC controlled,[605] and that civilians continued to be intentionally targeted as sources of labour and fighters.[606] Likewise, as a specific subset of such crimes against civilians, the Trial Chamber found a consistent, institutionalised pattern of the RUF/AFRC abducting children, conscripting them into the RUF/AFRC and using them to actively participate in hostilities.[607] The Trial Chamber concluded that the commission of these crimes was part of the RUF/AFRC's Operational Strategy.[608]

261. The Trial Chamber found that throughout the Indictment Period and in the areas they controlled, the RUF/AFRC enslaved large numbers of civilians.[609] Civilians were captured, controlled and forced to work in diamond mines in territories under the RUF/AFRC's control, including Kenema District from August 1997 until February 1998 and Kono District from January 1998 until the end of the Indictment Period.[610] The RUF/AFRC also forced captured civilians to perform a variety of other labour and tasks, including farming, fishing, food-finding, carrying loads, undergoing military training and domestic duties.[611] Such work was undertaken either entirely without substantive pay, or civilians were given wholly insufficient compensation in the form of meagre food items.[612] Throughout the Freetown Invasion, from the initial movement towards Benguema in December 1998 to the RUF/AFRC's eventual retreat from Freetown in January/February 1999, civilians were captured and forced to labour, including carrying weapons, materiel, food and looted goods for the RUF/AFRC forces.[613]

262. Physical violence against enslaved civilians was endemic. Civilians who refused to work faced beatings, detention or the RUF/AFRC would appropriate their goods.[614] Civilians forced to mine had to deliver diamonds they found to members of the RUF/AFRC and any attempt by a civilian to keep a mined diamond was met with violence.[615] Civilians who attempted to escape from the camps or committed other perceived breaches of the mining rules were beaten or killed by armed guards.[616] The conditions in which civilians worked at the mines cumulatively created an atmosphere of terror.[617] "Civilians died" on the training base due to the harshness of the military training they were forced to undergo.[618]

263. The use of forced civilian labour and attendant physical violence was well-organised, and RUF/AFRC commanders directed and participated in these crimes.[619] The pattern of mistreatment showed that crimes formed part of a continuous campaign directed against civilians in communities that the RUF/AFRC controlled.[620] The RUF/AFRC leadership, notably Sam Bockarie[621] and Issa Sesay,[622] created and directly participated in an organised system of forced farming in Kailahun District between 1996 and 2000, where civilians were forced to farm, to fish and were subjected to physical violence from RUF/AFRC forces.[623] When labour was requested by RUF/AFRC

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commanders, chiefdom and deputy chiefdom commanders were enlisted to bring civilians to farms to work without pay or benefit.[624] Mining activities were structured and regulated, with civilians captured, abducted and then taken to mining sites, while mining activities were overseen by RUF/AFRC mining commanders.[625] In 1998, Bockarie forced at least 200 civilians to labour, day and night without pay, to build an airfield in Buedu.[626] From February 1998 until the end of that year, at the direction of the RUF/AFRC leadership, an unknown number of civilians, including children, were abducted and forced to undergo military training at Bunumbu Training Camp (Camp Lion).[627] The same occurred at Yengema Training Base from about December 1998 until disarmament in 2000.[628]

264. The Trial Chamber found that throughout the Indictment Period and in the areas they controlled, the RUF/AFRC committed sexual violence against women and girls[629] and forced them into sexual slavery.[630] Women were also forced to perform domestic labour for the rebels, and were deprived of all rights.[631] The crime of sexual slavery was committed throughout Kailahun District;[632] women captured during rebel attacks on towns or villages were forced to be the "wives" of rebels,[633] and girls as young as 7–15 years old were used as sex slaves.[634] Between 1 February 1998 and 31 December 1998 in Koidu Town and RUF/AFRC camps, the RUF/AFRC abducted an unknown number of women and girls, and forcefully detained and raped them.[635] Throughout Kono District, an unknown number of women were abducted, held in captivity and forced to have sexual intercourse with their rebel captors.[636] Women and girls were also captured and subjected to sexual violence in Freetown and the Western Area during the Freetown Invasion.[637]

265. Victims of sexual violence suffered from sexually transmitted diseases, exhibited signs of post-traumatic stress disorder, and were often socially isolated, stigmatised and rejected by their families.[638] Refugees from Kono and Kailahun Districts all described witnessing public rape.[639] Not only were victims publicly undressed and violated, but some were subjected to perverse methods of sexual violence.[640] This sexual violence was deliberately aimed at destroying the traditional family nucleus, thus undermining the cultural values and relationships which held society together.[641] Victims of sexual slavery were further humiliated and degraded,[642] and the widespread and systematic use of women as sex slaves instilled fear and a sense of insecurity among the civilian population.[643] The public nature of these crimes of sexual violence was a deliberate tactic to "send a message" to the enemy and to instil fear and terror among civilians.[644] The RUF/AFRC committed a campaign of sexual violence and sexual slavery against the women of Sierra Leone in order to spread terror among the civilian population.[645]

266. The RUF/AFRC leadership not only endorsed and perpetrated sexual violence and slavery, but also set up an organised system for the commission of these crimes.[646] The RUF/AFRC leadership promoted sexual violence and slavery by promulgating "Operation Pay Yourself,"[647] where fighters were encouraged to take anything they wanted from the civilians, including wives, who were perceived as chattel.[648] Many captured young women lived with RUF/AFRC commanders, in conjugal servitude, and commanders perpetrated rapes.[649] There was a recognised system of ownership and hierarchy among captured women in the rebel forces, demonstrated by the fact that commanders' "wives" were accorded "special" treatment.[650] RUF/AFRC commanders also screened civilians captured by fighters,[651] after which women and girls were allowed to be taken by fighters, who then said they had "married" the women.[652]

267. The Trial Chamber found that throughout the Indictment Period and in the areas they controlled, the RUF/AFRC abducted and forcibly conscripted children under the age of 15 in Tonkolili, Kailahun, Kono, Bombali, and Port Loko Districts, as well as in Freetown and the Western Area, and used them to participate in hostilities.[653] Children were trained at Masingbi Road, Superman Ground and Yengema in Kono District, Rosos in Bombali District, Port Loko and Bunumbu in Kailahun District.[654]

268. Children were of importance to the RUF/AFRC as they carried out orders quickly and followed their bosses' way.[655] The RUF/AFRC gave children narcotics in order to make them fearless and to make them carry out orders without hesitation, and the children were likely to commit violent acts while under the influence of such substances.[656] Cocaine was sometimes administered by opening a cut on a child's body, putting cocaine in it and then covering it up with a plaster.[657] Some children developed drug addiction from the use of narcotics.[658] Children were used to guard mining sites and to collect diamonds produced by civilians working in the mines.[659] They were also used as personal bodyguards and domestic labour by the RUF/AFRC commanders.[660] The leadership sent these

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children to fight on the front lines, and they were used by RUF/AFRC commanders to commit crimes, particularly acts of terror, against the civilian population.[661]

269. Children were also victims of physical violence. Following their abduction, many children were forced to undergo military training in order for them to fight with the armed groups, or defend themselves in case of an attack.[662] Recruits who tried to escape were publicly marked with the letters "RUF" by instructors during formation so that the other recruits would see and be afraid.[663] If the children and other civilians refused to undergo the military training the rebels would kill them.[664] The practice of physically disciplining recruits was well known to the RUF/AFRC High Command and instructions to beat, kill or mark recruits were passed from high command and carried out.[665] The training was generally comprised of instructions on the use of weaponry, at times practiced with live ammunition, how to attack a town, fight and kill, how to guard, how to set an ambush, and how to burn houses.[666] Children sometimes died during the course of military training, and the RUF/AFRC leadership was made aware of this.[667]

270. The RUF/AFRC leadership instituted an organised system for the abduction, conscription, training and use of child soldiers, and further engaged in the abduction, military training, and use of children.[668] There was a consistent pattern of abducting children and forcing them into Small Boys Units ("SBU") and Small Girls Units ("SGU"), which were made up of children generally in the range of 5 to 17 years.[669] The existence of specific combat units designated for children demonstrates the institutionalised nature of conscription and use of children by the RUF/AFRC.[670]

271. The Appeals Chamber has carefully reviewed those findings and concludes that the Trial Chamber reasonably found that the crimes of enslavement, sexual violence and conscription and use of child soldiers, and the attending crimes of physical violence and acts of terror, were committed pursuant to the RUF/AFRC's Operational Strategy. First, the Trial Chamber's findings demonstrate a consistent pattern of crimes against civilians, which were all committed in a widespread and systematic manner against the civilian population in territories under the RUF/AFRC's control, and the RUF/AFRC consistently used physical violence to maintain ownership over civilians and control over child soldiers. Second, the Trial Chamber found that the RUF/AFRC leadership organised, ordered, directed and perpetrated these crimes against civilians. Third, these crimes were committed against the civilian population to achieve the RUF/AFRC's military and political goals, specifically in order to support and sustain the RUF/AFRC and enhance its military capacity and operations.[671] Enslaved civilians were forced to perform tasks such as farming, food finding and domestic chores, and forced to support the RUF/AFRC's military operations by mining for diamonds, which were later exchanged for arms and ammunition,[672] by undergoing military training and by carrying loads for the fighters during military operations. Women and girls were sexually enslaved and subjected to sexual violence for the gratification of RUF/AFRC commanders and soldiers, to undermine social structures and to spread terror. Child soldiers were used to enhance the RUF/AFRC's military capacity and functions, participating in hostilities, guarding diamond mines and carrying out orders to commit crimes against civilians.

272. Consistent with the Trial Chamber's finding that the primary *modus operandi* of the RUF/AFRC's Operational Strategy was the use of terror against the civilian population, rapes and sexual slavery were committed in public as a deliberate tactic with the primary purpose of spreading terror among the civilian population.[673] While the Trial Chamber did not consider that the primary purpose of enslavement and conscripting and enlisting child soldiers was to terrorise the civilian population,[674] child soldiers were used to terrorise free and enslaved civilians.[675]

273. Finally, the Appeals Chamber concludes that the Trial Chamber's findings demonstrate a consistent and continuous pattern of crimes throughout the Indictment Period directed against civilians in communities that the RUF/AFRC controlled. Throughout the Indictment Period, the RUF/AFRC leadership used forced farming for its sustenance, forced labour for its logistics, children for its soldiers and sexual violence and slavery for its morale. To obtain the weapons it needed, the RUF/AFRC leadership enslaved civilians to mine for diamonds, used children to guard them and terror to dominate them. These crimes, committed systematically on a widespread scale in the territories it controlled, gave the RUF/AFRC leadership the means to undertake its further military operations. When the RUF/AFRC seized and maintained new territory, the same consistent pattern of crimes was repeated. The pattern of crimes only ended when the RUF/AFRC disarmed and hostilities ceased.

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2. Other Crimes during the Indictment Period

274. In assessing the widespread and systematic nature of the attacks against the civilian population of Sierra Leone during the Indictment Period, the Trial Chamber noted that the Indictment Period spans more than five years, and that over that period, "there were many changes in the alliances between the warring factions, the membership and leadership structure of such factions, and their position in the conflict."[676] Accordingly, the Trial Chamber noted that because "the conflict evolved over time," it considered each phase of the conflict in turn, to which the Appeals Chamber now turns.[677]

275. The Trial Chamber found as background that the RUF began to deliberately use terror as a primary *modus operandi* of their political and military strategy[678] during "Operation Stop Election," launched on Election Day in March 1996,[679] when RUF forces attacked areas including Bo, Kenema, Magburaka, Matotoka and Masingbi.[680] Foday Sankoh[681] and the RUF leadership wanted to stop the election,[682] and to achieve this goal, Sankoh ordered RUF forces to commit murder and physical violence against civilians in order to instil terror in the population so that they would not vote and the elections would fail.[683] The RUF committed numerous atrocities against civilians, including carving "RUF" on the chests of civilians and the amputation of the fingers and/or hands of those who attempted to vote[684] in compliance with Sankoh's instruction to shoot and kill or to amputate the hands or fingers of any civilian believed to have participated in the elections.[685] In Kenema Town, under the command of Morris Kallon and Issa Sesay, RUF soldiers cut off the hands of civilians, and fired on those found in the street.[686] In Kenema National Hospital, RUF soldiers cut off civilians' fingers and sent them with a message to the Government soldiers that the RUF did not want an election.[687] In Magburaka, RUF commanders captured civilians, amputated their hands and carved "RUF" on their chests with razor blades.[688] RUF forces amputated civilians who had ink on their thumbs from polling day.[689]

(a) Beginning of Indictment Period (30 November 1996) to Intervention (February 1998)

276. On 25 May 1997, a group of SLA soldiers overthrew the government of President Kabbah in a coup d'état.[690] On 28 May 1997, the group announced that they had formed the AFRC and taken over power in Sierra Leone.[691] Within days of the coup, Johnny Paul Koroma became the leader and chairman of the AFRC.[692] The coup was widely condemned by the international community.[693] Shortly after the AFRC seized power, Johnny Paul Koroma invited Foday Sankoh and the RUF[694] to join the AFRC in Government,[695] and the RUF accepted the invitation.[696] In June 1997, the RUF issued a public apology for the crimes they had committed in Sierra Leone, including killings and rapes.[697]

277. The Trial Chamber found that during the Junta Period, from 25 May 1997 to about 14 February 1998, there were large numbers of civilian victims, and attacks were widespread and occurred in the areas that were under control of RUF/AFRC forces.[698] The pattern of crimes by the RUF/AFRC which was directed against civilians persisted and intensified during this period.[699] The Junta Period was characterised by a shift in the dynamics of the conflict as the RUF/AFRC, former adversaries, were now in a position of power in Sierra Leone.[700] The campaigns of the Junta government were aimed at the preservation of governmental authority,[701] and the number of civilians subjected to severe mistreatment increased as the conflict spread throughout the territory of Sierra Leone.[702] Civilians were the victims of killings, physical violence, rape, sexual slavery, torture and arbitrary detention perpetrated by RUF/AFRC fighters.[703] The violence and mistreatment of civilians by the RUF/AFRC was directed at perceived political opponents, journalists, students and human rights activists, but these attacks were not limited to such selected civilians and any perceived collaborator was targeted by the Junta.[704]

278. Under the leadership of RUF/AFRC commanders, most notably Sam Bockarie, many civilians were murdered in Kenema District.[705] As ECOMOG advanced towards Kenema, Bockarie said that if the situation went out of control prisoners would not be spared.[706] Civilians were killed in revenge or reprisal for perceived support of the Junta's enemies.[707] Civilians were also killed to underline RUF/AFRC authority and minimise resistance.[708] Afterwards, the RUF/AFRC displayed the bodies in public.[709] The RUF/AFRC openly killed civilian miners in the Tongo Fields area in order to ensure the servitude of other miners.[710] These killings in Kenema District were all committed in order to instil terror in the civilian population.[711] The RUF/AFRC specifically targeted the civilian

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population with the purpose of terrorising the population in order to minimise any resistance or opposition to the regime.[712]

(b) Intervention (February 1998) to Freetown Invasion (December 1998)

279. On 5 February 1998, ECOMOG commenced a major offensive against the RUF/AFRC, commonly known as the Intervention.[713] The RUF/AFRC was unable to halt ECOMOG's offensive, and by 14 February 1998, ECOMOG had succeeded in expelling the Junta regime from Freetown.[714] Sam Bockarie's RUF/AFRC forces retreated from Kenema to Kailahun Town and then to Buedu,[715] while the RUF/AFRC fighters who had been based in Freetown retreated to Masiaka under the leadership of Johnny Paul Koroma.[716] The RUF/AFRC was forced to leave the bulk of its supplies in Freetown and retreat with little more than the weapons and ammunition the soldiers were able to carry.[717] After the retreat from Freetown, JPK's forces captured Koidu Town in Kono District[718] in late February/early March 1998.[719] On 10 March 1998, the Kabbah Government was restored to power in Sierra Leone.[720] By mid-March 1998, ECOMOG, acting in concert with the CDF, extended its control to Bo, Kenema and Zimmi in the south of the country; Lunsar, Makeni and Kabala in the north; and Daru in the east.[721] A few weeks later, in April 1998, ECOMOG and the CDF regained control of Koidu Town and RUF/AFRC forces retreated to other locations in Kono District.[722]

280. The Trial Chamber found that following the Intervention, from February 1998 to December 1998, violence against civilians by the RUF/AFRC was frequent in RUF/AFRC-held territory and intensified in the north and east of Sierra Leone as the RUF/AFRC attacked those areas.[723] Several thousand civilians were killed or mutilated, hundreds more were abducted, and other crimes, such as rape, the burning of houses, killings and looting, continued.[724] Mass internal displacement also occurred during this period.[725] Many acts of terror and crimes were committed against the civilians in Kono District,[726] including killings, amputations and mutilations and burnings,[727] as well as against the civilians in Kailahun District.[728]

281. Between February and December 1998, the RUF/AFRC launched several operations, such as "Operation No Living Thing", "Operation Spare No Soul" and "Operation Pay Yourself", during which the fighters killed, mutilated, raped, looted and abducted civilians throughout Sierra Leone in compliance with explicit orders issued by the RUF/AFRC leadership.[729] Throughout this period RUF/AFRC commanders continued to give explicit orders for the fighters to kill civilians, burn their settlements and take their property.[730]

282. Sam Bockarie sent messages to all RUF/AFRC bases to make Kono District "fearful."[731] To make an area "fearful," the fighters would destroy life and property by killings, amputations, burning of houses, destruction of bridges and setting up road blocks.[732] The purpose was to make sure the local civilian population and the RUF/AFRC's enemies would be afraid.[733] Johnny Paul Koroma told the RUF/AFRC fighters to capture the able-bodied civilians in Kono and to execute the rest.[734] While in Koidu, JPK reiterated his orders to burn down any civilian homes so as to discourage civilians returning to live there, and to kill any civilian that attempted to return to the area, accusing them of being Kamajor supporters.[735] Issa Sesay endorsed Johnny Paul Koroma's orders, stating that civilians were very dangerous to the Junta forces, and the only way to ensure that the civilians did not stay in Kono was to burn down their houses and execute them.[736] In Kailahun District, Bockarie issued orders to senior RUF/AFRC commanders to defend Kailahun District against their perceived enemies, and then ordered the massacre of civilians who he suspected of being Kamajors or Kamajor supporters.[737] These orders demonstrated a clear intention to direct attacks against and terrorise the civilian population.[738]

283. In Kono District, fighters acting in accordance with orders given by their commanders deliberately targeted civilians in order to prevent them from staying in or returning to Koidu Town and in order to maintain the diamond-rich Kono District as a strong Junta base from which the RUF/AFRC fighters would finance and mount further attacks upon their enemies.[739] Civilian houses were burned down with the primary purpose of terrorising the civilian population by demonstrating the repercussions of collaborating with the enemies of the RUF/AFRC.[740] On arrival in Kono District around early March 1998, RUF/AFRC forces captured Sewafe and burnt down all civilian houses on the orders of Johnny Paul Koroma, who called Sewafe "a Kamajor stronghold."[741] In Kailahun Town, 60 to 65 civilians suspected of being Kamajors or Kamajor supporters were murdered on Sam Bockarie's orders as reprisal

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killings.[742] The campaign of reprisal against the civilian population was underlined by the deliberate tricking of civilians into showing their support for ECOMOG, followed by mass executions by RUF/AFRC forces.[743]

284. The RUF/AFRC also displayed the corpses of the civilians in order to frighten away civilians and prevent them from remaining in town.[744] In Bumpe between March and June 1998, RUF/AFRC forces acting under the orders of commanders including Kallay, Bomb Blast, Superman, Sam Bockarie, Morris Kallon, CO Rocky and others committed murders, the burning down of homes and mass amputations, and then displayed human heads on sticks at various checkpoints in order to instil terror in the civilian population.[745] During an attack on Koidu Buma, in May/June 1998, and with the approval of Commanders Bomb Blast, Bazzy and Superman, RUF Rambo killed 15 civilians and displayed their corpses in the street to create fear so no civilian would come to that area.[746] The amputations and mutilations practised by the RUF/AFRC were notorious, and served as a permanent, visible and grotesque reminder to all civilians of the consequences of resisting the RUF/AFRC, or of supporting Kabbah or ECOMOG.[747]

(c) Freetown Invasion (December 1998 to February 1999)

285. Throughout 1998, the RUF/AFRC struggled to combat ECOMOG forces and was repeatedly thwarted in its attempts to capture and hold areas in Kono District.[748] Disputes and divisions arose among the RUF/AFRC forces, with troops under the commands of SAJ Musa,[749] Gullit[750] and Superman[751] departing for the north of Sierra Leone and disputing Sam Bockarie's overall command of the RUF/AFRC.[752]

286. In October 1998, Sankoh was sentenced to death for treason by the High Court of Sierra Leone.[753] The announcement that Sankoh had been sentenced to death, and that 24 AFRC soldiers had been executed, provoked a rallying cry from the RUF/AFRC commanders, especially Sam Bockarie, who wanted to go to Freetown to free Sankoh.[754] Bockarie then went to Monrovia, where he met with Taylor and designed a plan for RUF/AFRC forces to carry out the Bockarie/Taylor Plan, a two-pronged attack on Kono and Kenema with the ultimate objective of reaching Freetown.[755] Upon Bockarie's return to Sierra Leone from Monrovia, he convened a meeting at Waterworks where he outlined the plan to his commanders,[756] armed them with ammunition and assigned them to two brigades for the two-pronged attack on Kono and Kenema.[757]

287. In the last days of 1998 and into January 1999, rebels went on the offensive in several areas of Sierra Leone, including Makeni, Lunsar and Port Loko, where civilians were killed, property looted and homes destroyed during these attacks.[758] Issa Sesay captured Kono in mid-December, with ECOMOG forces sustaining heavy casualties during their retreat.[759] RUF/AFRC troops captured Masingbi, Magburaka and Makeni by 23 December 1998, while unsuccessful attacks were mounted on the Segbwema-Daru axis towards Kenema.[760] Following the capture of Makeni, RUF/AFRC forces moved towards Freetown, attacking Lunsar, Port Loko, Masiaka and Waterloo.[761] At the same time, in mid-December 1998 the group led by SAJ Musa and Gullit independently commenced its advance on Freetown and by the end of December 1998 had reached Benguema on the outskirts of Freetown.[762] Following SAJ Musa's death on 23 December 1998, Gullit assumed command and resumed contact with Sam Bockarie, and his forces continued their advance towards Freetown, attacking Hastings on 3 January 1999.[763] On 6 January 1999 Gullit's forces commenced their attack on Freetown[764] and captured the State House.[765] Gullit's fighters were joined by a small contingent of troops sent by Bockarie under the leadership of Rambo Red Goat.[766]

288. As Gullit was facing increasing pressure from ECOMOG only days after entering Freetown, Sam Bockarie ordered him to make the area "fearful"[767] and use terror tactics against the civilian population.[768] Bockarie gave Gullit direct instructions to cause mayhem, to destroy government buildings and amputate the limbs of civilians, in order to raise alarm in the international community.[769] Bockarie told the forces that if they made Freetown "fearful", the international body would intervene and ECOMOG would stop, and that maybe they would start calling for peace talks.[770] Bockarie also emphasised that Freetown had to be "fearful" in order to improve their negotiating position in relation to any future peace talks and the release of Sankoh.[771]

289. In compliance with Bockarie's instructions,[772] Gullit then ordered and incited RUF/AFRC rebels to wage a campaign of terror against the civilian population of Freetown.[773] Gullit issued orders to the fighters to burn as many buildings and capture as many civilians as possible along the way in order to force the Government to recognise them.[774] The "fearful" order was passed by the top commanders to the fighters,[775] and Gullit's forces carried

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out indiscriminate killings, mass abductions, raping of civilians, and burning and destruction of civilian and public property in Freetown.[776] There was widespread rape and sexual abuse of girls and women,[777] including rapes by commanders.[778] Women were captured during the Freetown retreat and used as domestic and sexual slaves.[779] A message was sent back to Bockarie informing him that the men had gone on a rampage and that they were killing people, wounding civilians and that the area had become "fearful."[780]

290. The rebels held central Freetown for four days, until a counter-attack by ECOMOG forces weakened their position.[781] While Gullit's forces managed a controlled retreat from Freetown, making Freetown "fearful" as they retreated, RUF/AFRC reinforcements sent by Sam Bockarie arrived in Waterloo.[782] The RUF/AFRC then made collaborative efforts to re-attack Freetown.[783] On 24 February 1999, ECOMOG forces finally succeeded in expelling the rebels from Waterloo.[784]

291. The Trial Chamber found that during the Freetown Invasion, rebels killed thousands of civilians and thousands more were abducted, burnt, beaten, mutilated, raped and/or sexually abused throughout Freetown and its surroundings, including the State House area, Kissy, Upgun, Calaba Town, Allen Town, and in the nearby towns of Hastings, Wellington, Waterloo and Benguema.[785]

292. Sam Bockarie, Gullit and other RUF/AFRC commanders ordered the widespread and systematic commission of acts of terror against the civilian population of Freetown and its surrounds to achieve their political and military goals. The acts of terror committed against the civilian population were used to: punish the civilian population of Freetown for perceived collaboration with ECOMOG and the Kamajors;[786] undermine confidence in the legitimate Government of Sierra Leone;[787] minimise resistance and dissent;[788] force the Government of President Kabbah to negotiate with the RUF/AFRC;[789] and generally destroy Freetown as the capital of Sierra Leone so that it and the country would be ungovernable.[790]

(d) Post-Freetown Invasion (March 1999) to End of Indictment Period (18 January 2002)

293. On 7 July 1999, the Lomé Peace Accord was signed by President Kabbah and Foday Sankoh.[791] The Government of Sierra Leone and the RUF/AFRC agreed to the immediate release of Sankoh, the transformation of the RUF into a political party that would become part of the Government of Sierra Leone and amnesty for all warring factions, including RUF members.[792] Sankoh received a formal position within the Sierra Leonean Government as Chairman of the Commission for the Management of Strategic Resources, National Reconstruction and Development, a position with the status of Vice-President of Sierra Leone.[793] This position gave Sankoh control over the natural resources, including diamonds, of Sierra Leone.[794]

294. The Lomé Peace Accord did not end hostilities in Sierra Leone,[795] and the disarmament process took time to eventuate.[796] On 10 November 2000, a peace agreement known as the "Abuja I Peace Agreement" was signed.[797] With the exception of skirmishes with the CDF in Kono District, the ceasefire generally held.[798] A ceasefire review conference was held in Abuja in May 2001, in what became known as the "Abuja II Peace Agreement."[799] From mid-2001, significant progress was made in the disarmament process.[800] By the end of 2001, disarmament was complete and hostilities had ceased in all areas of Sierra Leone, with the exception of Kono District.[801] On or about 18 January 2002, President Kabbah announced the end of hostilities in Sierra Leone, signalling the end of the war.[802]

295. The Trial Chamber found that until the end of the Indictment Period,[803] attacks by the RUF/AFRC against the civilian population continued, affecting large numbers of civilians throughout the north and east of Sierra Leone.[804] Through July 1999, there was violence against civilians in areas northeast of Freetown, including Masiaka, Port Loko, the Occra Hills and other locations in Port Loko District such as Songo, Mangarama, Masumana, Matteh, Melikeru and Tomaju. The civilian population was subjected to killings, mutilations, abductions, sexual abuse, large-scale property destruction and the contamination of fresh water sources.[805] In August 1999, the villages of Landomah, Bonkoleke, Roists, Tenkabereh and Wonfinfer in Port Loko District were looted and civilians displaced.[806] From September until the end of the year, attacks upon civilians increased, particularly along the Lungi-Port Loko axis where summary executions, instances of physical violence, looting, mutilations, sexual abuse, abductions and harassment were reported.[807] In May 2000, approximately 40 civilians had the letters "RUF" carved into their bodies in Kabala.[808]

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296. The RUF/AFRC continued to enslave civilians and force them to farm and fish for commanders up until 2000.[809] Civilians were abducted and forced to undergo military training at Yengema Training Base until 2000.[810] Forced mining continued until the end of the Indictment Period.[811] Civilians continued to be abducted in Makeni and Kambia Districts, and a large number of civilians continued to be captured and brought to mining sites in Kono District.[812] Between December 1999 and mid-2001, civilians were killed around Koidu Town for refusing to mine.[813] Captured civilians continued to be used as sexual slaves.[814] The RUF/AFRC continued to abduct, train and use child soldiers after the signing of the Lomé Peace Accord.[815] Children continued to be used to guard mining sites.[816] In Makeni in May 2001, RUF/AFRC forces took an unknown number of children from a child care centre and conscripted them.[817]

D. Conclusion

297. First, the Appeals Chamber concludes that the Trial Chamber reasonably found a consistent pattern of crimes against civilians in each of the periods reviewed above. In each period, the RUF/AFRC directed a widespread and systematic attack against the civilian population of Sierra Leone[818] through the commission of crimes including killings, enslavement, physical violence, rape, sexual slavery, and looting[819] against large numbers of civilian victims.[820] Each and all of these crimes were horrific and shocked the conscience of mankind.

298. Second, in the Appeals Chamber's view, the Trial Chamber's findings fully support the conclusion that in each period, this pattern of crimes against civilians was organised, ordered, directed and committed by the RUF/AFRC leadership. The Trial Chamber's findings document in detail the personal and direct involvement of the RUF/AFRC leadership in the commission of crimes against civilians, including: Sam Bockarie's personal attacks against civilians in Kenema; the repeated instructions by Bockarie, JPK, Issa Sesay, Gullit and others to kill, mutilate, rape, burn and make areas "fearful"; the organised and systematic abduction and enslavement of men, women and children; and the direct involvement of many commanders in many crimes.

299. Third, the Appeals Chamber concludes that in each period, the Trial Chamber's findings demonstrate that crimes against civilians were directed to the achievement of the RUF/AFRC's political and military goals. The Appeals Chamber notes that crimes against civilians continued to be used to achieve political and military goals even as those goals changed during the course of the conflict. Crimes of enslavement, sexual violence and conscription and use of child soldiers, as well as attending physical violence and acts of terror, were committed throughout the Indictment Period to support and sustain the RUF/AFRC and enhance its military capacity and operations. During the Junta Period, faced with a need to maintain its new-found authority, the RUF/AFRC committed crimes against civilians to minimise dissent and resistance and punish any support for President Kabbah, the CDF or ECOMOG. Following the Intervention and their defeat by ECOMOG, struggling to regroup and regain lost territory, the RUF/AFRC committed crimes against civilians to sustain itself, clear and hold territory, control the population, eradicate support for its opponents and attract the attention of the international community. During the Freetown Invasion, the RUF/AFRC devastated Freetown to secure the release of Sankoh and force the Government to the negotiating table. After the Freetown Invasion and Lomé Peace Accord, having achieved Sankoh's freedom and a place in government through the commission of crimes against civilians, the RUF/AFRC committed further crimes against civilians to maintain itself as a fighting force and to ensure the continued supply of diamonds.

300. The Appeals Chamber is further satisfied that the Trial Chamber's findings show that the RUF/AFRC used acts of terror as its primary *modus operandi* throughout the Indictment Period. The RUF/AFRC pursued a strategy to achieve its goals through extreme fear by making Sierra Leone "fearful." The primary purpose was to spread terror, but it was not aimless terror. Barbaric, brutal violence was purposefully unleashed against civilians because it made them afraid—afraid that there would only be more unspeakable violence if they continued to resist in any way, continued to stay in their communities or dared to return to their homes. It also made governments and the international community afraid—afraid that unless the RUF/AFRC's demands were met, thousands more killings, mutilations, abductions and rapes of innocent civilians would follow. The conflict in Sierra Leone was bloody because the RUF/AFRC leadership deliberately made it bloody.

301. Having reviewed each of the periods discussed above individually, and satisfied itself regarding the Trial Chamber's finding of a consistent pattern of crimes organised, directed and committed by the RUF/AFRC leadership

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to achieve their political and military goals, the Appeals Chamber affirms that the RUF/AFRC's Operational Strategy was continuous throughout the Indictment Period.

302. In light of the above, the Appeals Chamber affirms the Trial Chamber's finding that the RUF/AFRC's Operational Strategy was to achieve its political and military goals through a campaign of crimes against the Sierra Leonean civilian population, using terror as its primary *modus operandi*. Ground 17 is accordingly dismissed in present parts.

VI. TAYLOR'S ACTS, CONDUCT AND MENTAL STATE

303. The Appeals Chamber has reviewed the Trial Chamber's assessment of the evidence and affirmed the findings in the Judgment.[821] It has further affirmed the Trial Chamber's finding that the RUF/AFRC leadership pursued an Operational Strategy to commit the crimes charged in Counts 1–11 of the Indictment.[822]

304. The following is a *summary* of the Trial Chamber's affirmed findings regarding Taylor's acts, conduct and mental state.

A. Beginning of Indictment Period (30 November 1996) to Intervention (February 1998)

305. The Trial Chamber found that by the beginning of the Indictment Period, Taylor knew of the RUF and of the crimes it had previously committed.[823] In March 1991, Taylor stated publicly on the radio that "Sierra Leone would taste the bitterness of war"[824] because it was supporting ECOMOG operations in Liberia.[825] Taylor knew that in 1991 and 1992, during the early war of Sierra Leone, RUF soldiers, under the command of Taylor's NPFL officers, abducted civilians including children, forcing them to fight within the NPFL/RUF forces against the Sierra Leonean forces and ULIMO.[826] Taylor further knew[827] that in 1994, the RUF attacked the international mining company Sierra Rutile, in Bonthe District,[828] looted the facility and captured hostages,[829] in order to gain the international community's attention.[830] Taylor advised Foday Sankoh, leader of the RUF, on the use of the money and the hostages,[831] telling Sankoh to buy ammunitions, food and drugs with the money that had been looted, and to use the money and the hostages to establish diplomatic relations with other countries.[832] Finally, Taylor knew[833] that in early 1996, disgruntled by the decision to hold elections before a peace agreement was signed,[834] Sankoh ordered "Operation Stop Election,"[835] during which RUF forces attacked areas including Bo, Kenema, Magburaka, Matotoka and Msingbi[836] on Election Day.[837] They "committed numerous atrocities against civilians, including carving 'RUF' on the chests of civilians and the amputation of the fingers and/or hands of those who attempted to vote."[838]

306. During the Junta Period, the RUF/AFRC deliberately used terror against the Sierra Leonean population as a primary *modus operandi* of their Operational Strategy.[839] The crimes committed by the RUF/AFRC Junta were significantly reported by international organisations as early as May 1997.[840] The UN Department of Humanitarian Affairs on 4/5 June 1997 reported killings of civilians, amputations and looting in Sierra Leone.[841] In a meeting held on 26 June 1997 in Conakry, the Foreign Ministers of ECOWAS reviewed the situation in Sierra Leone and "deplored the bloodletting and other human losses that occurred during the coup d'état of 25 May 1997. They warned the illegal regime against all acts of atrocities against Sierra Leonean citizens, foreign nationals living in Sierra Leone and personnel of ECOMOG."[842] In a Statement dated 11 July 1997, the President of the UN Security Council expressed concern with the situation in Sierra Leone and "the atrocities committed against Sierra Leone's citizens."[843] On 6 August 1997, the President of the UN Security Council reiterated the Security Council's concerns over "the deteriorating humanitarian situation in Sierra Leone, and at the continued looting and commandeering of relief supplies of international agencies . . . . The Council condemns the continuing violence and threats of violence by the junta towards the civilian population, foreign nationals and personnel of the ECOWAS monitoring group, and calls for an end to such acts of violence."[844] The violence in Sierra Leone was thus in the public domain.

307. Taylor knew of the RUF/AFRC's Operational Strategy and intent to commit crimes, as well as the ongoing crimes committed by the Junta, as early as August 1997 following his election as President of Liberia.[845] His national security adviser provided him with daily briefings, including press and intelligence reports regarding the situation in Sierra Leone.[846] As President of Liberia, Taylor was a member of the ECOWAS Committee of Five[847] on the situation in Sierra Leone and would have received and read ECOWAS reports on Sierra Leone.[848] Reports on the

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crimes taking place in Sierra Leone were "at the core" of discussions by the ECOWAS Committee of Five.[849] Following meetings held on 26 and 27 August 1997, the ECOWAS Chiefs of States condemned the violent overthrow of the legitimate government of Sierra Leone and described it as "a very bloody coup, followed by massive looting and vandalisation of public and private properties and the opening of the prisons by the junta."[850] The fifth meeting of the Foreign Ministers of the ECOWAS Committee of Five on 10 to 11 October 1997 noted the gross violations of human rights committed by the Junta regime.[851] On 23 October 1997, the Committee of Five met in Conakry and agreed to a peace plan for Sierra Leone, calling for the cessation of hostilities and the reinstatement of President Kabbah by 22 April 1998.[852]

308. On 29 August 1997, ECOWAS decided to place a total embargo on all supplies of petroleum products, arms and equipment to Sierra Leone.[853] On 8 October 1997, the UN Security Council determined that the situation in Sierra Leone constituted a threat to international peace and security in the region and decided to impose an embargo on Sierra Leone.[854] As these embargos demonstrate, the Junta was perceived by the international community as a threat to peace, and it was recognised that any military support could facilitate the commission of crimes by the RUF/AFRC.[855] Following his election, at the same time that ECOWAS and the UN were condemning the activities of the RUF/AFRC, Taylor's support for the RUF/AFRC reached a higher level of activity, as "at this point, [Taylor] was in a position to play a significantly expanded role in Sierra Leone, both in terms of political and military support."[856]

309. At the same time, Taylor accepted and supported the Junta, and told the RUF/AFRC that he would encourage ECOWAS members to do so as well.[857] He also encouraged Johnny Paul Koroma, as head of the AFRC, and Sam Bockarie, as leader of the RUF in Sankoh's absence, to work together.[858] Taylor held a position of authority as an elder statesman, and as President of Liberia, he was accorded deference by the RUF/AFRC and his advice was generally heeded by them.[859] Following his arrest in March 1997, Foday Sankoh instructed Sam Bockarie to take instructions from Taylor.[860] "[T}he role that Sankoh envisioned for [Taylor] while he was in detention was that [Taylor] would guide Bockarie, and that Bockarie should look to his guidance, not that [Taylor] should take over Sankoh's role as the leader of the RUF with effective control over its actions." Taylor gave instructions to Bockarie with his inherent authority by virtue of his position, and Bockarie was deferential to Taylor, generally following his instructions.[861]

310. There was a general and complete embargo placed by the UN Security Council on all deliveries of weapons and military equipment to Liberia from November 1992 that remained in place throughout the Indictment Period.[862] Notwithstanding the arms embargo on Liberia, "Taylor was able to obtain arms and had the capacity to supply arms and ammunition to the rebel groups in Sierra Leone, and had the capacity to facilitate larger arms shipments through third countries."[863] While ECOMOG forces were stationed at the Liberia/Sierra Leone border, tasked with establishing a buffer zone in an attempt at implementing successive peace agreements in Liberia,[864] their presence was not sufficient to prevent the cross-border movement of arms and ammunition.[865] Taylor utilised intermediaries[866] including Yeaten,[867] Tamba,[868] Ibrahim Bah,[869] Marzah[870] and Weah[871] to conduct the supply of diamonds mined by enslaved civilians from the RUF/AFRC leadership to himself, and the supply of arms and ammunition from him to the RUF/AFRC leadership.[872] These individuals also passed along advice and instructions from Taylor to the RUF/AFRC leadership.[873]

311. During the Junta Period, diamonds mined in Kono and Tongo Fields were delivered from the RUF/AFRC[874] to Taylor[875] by Daniel Tamba in exchange for arms and ammunition.[876] The RUF/AFRC were mining at different sites in Kono and in Tongo, where they forced civilians to mine under slave-like conditions and committed acts of violence against civilians to guarantee their servitude and control the mining activities.[877] Tamba acted as a liaison between the RUF/AFRC leadership and Taylor by bringing arms and ammunition to Sierra Leone in exchange for the diamonds that he delivered to Taylor.[878] Following the Intervention,[879] from February 1998 to July 1999, diamonds were delivered to Taylor by Sam Bockarie directly,[880] as well as indirectly through intermediaries including Eddie Kanneh[881] and Tamba,[882] in order to get arms and ammunition from him.[883] Taylor had responsibility for the movement of diamonds through Liberia.[884]

312. While the Junta regime obtained a significant amount of materiel from the existing military stores in Freetown,[885] at some point in or after August 1997, it had depleted the available sources of supplies in Freetown or

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was not obtaining from them satisfactory amounts of materiel.[886] In the face of the arms embargo imposed on Sierra Leone, the RUF/AFRC needed to obtain more supplies in order to sustain its activities. Taylor sent Ibrahim Bah on his behalf to Freetown to meet with Sam Bockarie and Johnny Paul Koroma to make arrangements for the procurement of arms and ammunition.[887] The RUF/AFRC Supreme Council agreed to pay 90 carats of diamonds and $USD 90,000 for the shipment,[888] which was delivered by plane to Magburaka in Sierra Leone sometime between September and December 1997.[889] RUF/AFRC members were present for the delivery, and the material was then distributed to locations including JPK's residence, Cockerill Military Headquarters, Makeni, Magburaka and Kenema.[890]

313. This shipment comprised a large quantity of arms and ammunition.[891] The delivery was "huge, including 200 AK-47 rifles, two 75 calibre machine guns, rocket propelled grenades and 80 boxes of AK-47 ammunition,"[892] and "there was a 'large quantity' of ammunition comprising AK rounds, G3 rounds, mortar bombs, RPG bombs and stinger missile bombs. . . . "[893] The materiel from this shipment was used by the RUF/AFRC forces in the Junta mining operations at Tongo Fields prior to the Intervention, in fighting ECOMOG and SLPP forces in Freetown before, during and after the Intervention, in "Operation Pay Yourself" and subsequent offensives on Kono, as well as in the commission of crimes during those operations.[894]

314. Taylor also sent ammunition to Sam Bockarie in Sierra Leone via Daniel Tamba,[895] and made available the vehicles in which the materiel was transported.[896] Bockarie stored this materiel sent by Taylor in Kenema, and it was used in the course of RUF/AFRC activities in Kenema District, which included the commission of crimes in that area.[897] Taylor received diamonds mined in Kono and Tongo Fields by the RUF/AFRC as payment for the arms provided by Tamba.[898]

315. The needs of the RUF/AFRC during the Junta Period were not fulfilled in any significant proportion by materiel obtained from other sources.[899] The existing military stores in Freetown captured by the RUF/AFRC following the 25 May 1997 coup were not sufficient to sustain the RUF/AFRC forces beyond August 1997.[900] Trade between the RUF/AFRC and ULIMO was minor at the time[901] and only involved a relatively small quantity, insufficient to sustain operations.[902] Issa Sesay testified that "trade on the border with Guinea was irregular and not dependable"[903] and that it "resulted only in small amounts of ammunition."[904]

B. Intervention (February 1998) to Freetown Invasion (December 1998)

316. The period following the Intervention was marked by the widespread and systematic commission of acts of terror against the civilian population of Sierra Leone by RUF/AFRC forces.[905] From February 1998 to December 1998, human rights abuses intensified, leaving thousands of civilians killed or mutilated by RUF/AFRC fighters, hundreds of civilians were abducted and raped and the burning of houses and looting continued.[906]

317. Media coverage of the RUF/AFRC's crimes and terror campaign against the Sierra Leonean population increased.[907] It was a matter of public knowledge that RUF/AFRC forces were committing unlawful killings, sexual violence, physical violence, conscription and use of child soldiers, abduction and forced labour, looting and terrorism.[908] Systematic and widespread rebel attacks against the civilian population were reported by the UN throughout 1998.[909] Amnesty International reported:

> During 1998, the scale of atrocities against civilians in Sierra Leone has reached unprecedented levels. Several thousand unarmed civilians, including many women and children, have been deliberately and arbitrarily killed and mutilated by forces of the Armed Forces Revolutionary Council (AFRC) and the armed opposition Revolutionary Front (RUF) since February 1998. . . . [T]he scale of human rights abuses committed by AFRC and RUF forces in the north and east of the country has escalated and taken on grotesque forms. From April 1998 reports emerged of civilians suffering mutilations such as crude amputations of their feet, hands, arms, lips or ears. Women and girls have been systematically raped. Hundreds of civilians, in particular children and young men and women, have been abducted by rebel forces.[910]
>
> AFRC and RUF forces in the east and north of Sierra Leone are deliberately and arbitrarily killing and torturing unarmed civilians. A deliberate and systematic campaign of killing, rape and mutilation,-called by the AFRC and RUF "*Operation No Living Thing*"—has emerged since April 1998.[911]

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318. In June 1998, the UN Security Council reiterated its condemnation for the continued resistance to the authority of the legitimate Government of Sierra Leone and urged all rebels to put an end to the atrocities, cease their resistance and lay down their arms.[912] At a joint meeting between President Taylor and President Kabbah held on 2 July 1998, the two Heads of State "strongly condemned the continued rebel activities in Sierra Leone as well as the horrendous atrocities committed there."[913] At his trial, Taylor testified that if "someone was providing support to the AFRC/RUF [by April 1998] . . . they would be supporting a group engaged in a *campaign of atrocities* against the civilian population of Sierra Leone."[914] He further testified that in May 1998 there were news reports of a "horrific campaign being waged against the civilian population in Sierra Leone,"[915] and that by August 1998, the RUF/AFRC's crimes were notorious.[916] The Trial Chamber accepted his testimony, and further accepted that Taylor knew that crimes were committed in Sierra Leone while Sam Bockarie was in charge of the rebels including looting in February 1998 and that the Sierra Leonean population was terrorised in May 1998.[917]

319. Control over the diamond mines in Kono and Kenema Districts was crucial for the war effort of the RUF/AFRC.[918] After the RUF/AFRC lost control of mines in Kono and Kenema following the Intervention, Taylor consistently advised the RUF/AFRC leadership to seize and maintain control of the diamondiferous area of Kono in order to ensure the continuation of the trade of diamonds in exchange for arms and ammunition.[919] When the RUF/AFRC forces were pulling out of Kono during the Intervention, Benjamin Yeaten's radio station in Monrovia intervened to ask why the forces were withdrawing.[920] After the retreat from Freetown, Taylor instructed Johnny Paul Koroma to capture Kono, and after a first failed attempt, Taylor gave JPK instructions for a second attack, which led to the ultimate recapture of Koidu Town in Kono District by the RUF/AFRC[921] in late February/early March 1998.[922] After Sam Bockarie assumed control of the RUF/AFRC forces,[923] in February 1998 he travelled to Monrovia to meet Taylor.[924] Taylor told Bockarie to be sure to maintain control of Kono for the purpose of trading diamonds with him for arms and ammunition.[925] Following the RUF/AFRC's defeat in Kono in April 1998,[926] Taylor advised Bockarie to recapture Kono so that the diamonds there would be used to purchase arms and ammunition.[927] He also provided ammunition to the RUF/AFRC to be used in the recapture of Kono.[928] Taylor and Bockarie discussed plans for the Fitti-Fatta attack, and Taylor sent "herbalists" who marked the fighters to bolster their confidence in preparation for the attack.[929]

320. Throughout 1998, the RUF/AFRC relied frequently and heavily on arms and ammunition provided by Taylor to carry out its operations and maintain territories, which involved the commission of crimes against the civilian population.[930] The Magburaka Shipment was relied on in "Operation Pay Yourself" and subsequent offensives until 24 June 1998, and was used to commit crimes during those operations.[931] Additional materiel provided by Taylor was used in: operations in Kono District in early 1998, and the commission of crimes during those operations;[932] Operation Fitti-Fatta in Kono in mid-1998;[933] operations in Koinadugu and Bombali Districts from June to October 1998, which included the commission of crimes;[934] and attacks on Mongor Bendugu and Kabala, shortly after Operation Fitti-Fatta in mid-1998, which included the commission of crimes.[935] In all these operations the RUF/AFRC was heavily reliant on the supplies of materiel provided by Taylor.[936]

321. From February 1998, Sam Bockarie would send radio requests through to Liberia when he was short of materiel.[937] Bockarie made a series of trips to Liberia in 1998 during which he obtained a sizeable amount of materiel from Taylor.[938] Taylor also sent small supplies of arms and ammunitions to the RUF/AFRC in Buedu, through, *inter alia*, Tamba, Weah and Marzah.[939] He further sent Varmuyan Sherif to open a corridor for the exchange of arms and ammunition between the RUF/AFRC and ULIMO,[940] and provided financial support to the RUF/AFRC to facilitate the purchases of arms and ammunition from ex-ULIMO combatants.[941]

322. In turn, diamonds were delivered to Taylor by Sam Bockarie directly, as well as indirectly through intermediaries, including Eddie Kanneh and Daniel Tamba from February 1998 to July 1999, for the purpose of obtaining arms and ammunition from Taylor.[942]

323. Taylor provided the vehicles in which the materiel was transported to Sierra Leone and security escorts who facilitated the crossing of border checkpoints into or from Liberia.[943] The sustained and significant facilitation of road and air transportation of materiel, as well as security escorts, played a vital role in the operations of the RUF/AFRC during a period when an international arms embargo was in force.[944] In addition, Taylor's NPFL communications system was used to report the movements of Eddie Kanneh between Liberia and Sierra Leone with

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diamonds, and information on diamond mining in Sierra Leone.[945] Taylor also advised Sam Bockarie that the RUF/AFRC should construct or re-prepare the airfield in Buedu, so that arms and ammunitions could be shipped to RUF/AFRC-controlled territory.[946]

324. Other sources of materiel were of minor importance in comparison to that supplied or facilitated by Taylor.[947] The RUF/AFRC did not obtain further materiel after the Magburaka Shipment in late 1997, and was not able to capture a significant amount of supplies in the retreat from Freetown.[948] The needs of the RUF/AFRC during 1998 were not fulfilled in any significant proportion by materiel obtained from ULIMO, Guinea or other private sources.[949] Moreover, Taylor played a key role in facilitating the trade with ULIMO, and thus this trade was not an "alternative" source of arms and ammunition.[950] While the groups led by Gullit, Superman and SAJ Musa later captured materiel during attacks carried out during the latter half of 1998,[951] they relied on materiel provided by Taylor to carry out these attacks and capture the additional materiel.[952]

325. Immediately after the Intervention, Taylor met Sam Bockarie in Monrovia and said that he would help the RUF/AFRC and provide support.[953] On Taylor's advice, Bockarie opened Camp Lion, an RUF/AFRC training camp, at Bunumbu in 1998,[954] where crimes were committed,[955] including the training of children under the age of 15 years.[956] Taylor sent former SLA soldiers to Camp Lion to be re-trained soon after the Intervention.[957]

326. Taylor also provided the RUF/AFRC leadership with sustained and significant communications support.[958] He provided Sam Bockarie with a satellite phone to enhance his communications capability.[959] He also provided his communications network to facilitate communications regarding arms shipments, diamond transactions and military operations.[960] For example, on one of Bockarie's first trips to Monrovia after the Intervention, radio operator Dauda Aruna Fornie, who accompanied Bockarie on this trip, kept Bockarie appraised of events in Sierra Leone by using Base 1, a radio station at Benjamin Yeaten's home in Monrovia.[961] "448 messages" were sent by Taylor's subordinates in Liberia, with Taylor's knowledge, alerting the RUF/AFRC when ECOMOG jets left Monrovia to attack RUF/AFRC forces in Sierra Leone.[962] The radio station in Buedu would then pass on the message to all RUF/AFRC stations on the frontlines so that the RUF/AFRC forces could take cover.[963]

C. Freetown Invasion (December 1998 to February 1999)

327. In early November 1998, Sam Bockarie requested arms and ammunition from Taylor to support a major attack.[964] Bockarie and an RUF/AFRC delegation then went to Monrovia to secure the arms and ammunition, as well as advice, needed for the attack.[965] Bockarie met with Taylor in Monrovia, where they designed a plan for the RUF/AFRC forces to carry out a two-pronged attack on Kono and Kenema with the ultimate objective of reaching Freetown (the "Bockarie/Taylor Plan").[966] Taylor instructed Bockarie to make the operation "fearful" in order to force the Government into negotiation and free Sankoh from prison.[967] He also emphasised to Bockarie the need to first capture Kono due to its diamond wealth.[968] Taylor was further instrumental in procuring a large quantity of arms and ammunition, which was "unprecedented in its volume," for the RUF/AFRC to use in the attack on Freetown.[969] Taylor was paid for the shipment with diamonds. He sent Musa Cissé, his Chief of Protocol with the delegation to Burkina Faso, and directed the distribution of the shipment. He kept some of it for his own purposes.[970] Upon his return and following discussions with his commanders, Bockarie briefed Taylor using the satellite phone that Taylor had provided him.[971] During this call, Taylor told Bockarie to "use all means" to get to Freetown.[972] Subsequently, Bockarie named the operation "Operation No Living Thing," implying that anything that stood in their way should be eliminated.[973]

328. Taylor further assisted the operation by providing military personnel. He sent 20 former NPFL soldiers from Liberia to Sierra Leone to join the RUF/AFRC forces. The NPFL soldiers were incorporated into a formation known as the Red Lion Battalion and participated in the Freetown Invasion.[974] Taylor also reorganised, armed and sent a group of at least four former SLA soldiers who had fled to Liberia back to Sierra Leone to support the attack on Freetown.[975] In addition, Taylor sent Abu Keita[976] and 150 men to Sierra Leone, where they were later incorporated into Sam Bockarie's command with Taylor's approval.[977] Keita participated in the attack on Kenema, and participated in the commission of crimes during this attack.[978]

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329. In mid-December 1998, armed with the materiel from the Burkina Faso Shipment,[979] RUF/AFRC forces under the command of Issa Sesay successfully commenced their attack on Kono District in accordance with the Bockarie/Taylor Plan.[980] ECOMOG forces sustained heavy casualties during their retreat from Kono, and the RUF/AFRC was able to capture a significant quantity of arms, ammunition and other supplies from ECOMOG.[981] RUF/AFRC forces continued moving west towards Freetown as planned, capturing Masingbi, Magburaka and Makeni by 24 December 1998[982] and then attacking Lunsar, Port Loko, Masiaka and Waterloo.[983] At the same time, in mid-December 1998, SAJ Musa's group independently commenced its advance on Freetown, and by the end of December 1998 had reached Benguema on the outskirts of Freetown.[984] Following the capture of Benguema, SAJ Musa was killed on 23 December 1998 and Gullit took over as commander.[985]

330. Gullit then contacted Sam Bockarie.[986] Bockarie took the opportunity presented by SAJ Musa's death and the concomitant resumption of cooperation to attempt a coordinated effort to capture Freetown as he and Taylor had planned.[987] After communicating with Gullit, Bockarie ordered his troops to advance towards Freetown, with the aim of joining forces with Gullit in Freetown, and Bockarie, Gullit, Issa Sesay and the RUF/AFRC commanders coordinated in order to achieve that aim.[988] Bockarie instructed Issa Sesay to reinforce the troops in Freetown,[989] and Issa Sesay then sent RUF/AFRC forces under the command of Rambo Red Goat into Freetown, where they were able to join up with Gullit's forces.[990] Throughout the attack on Freetown, Gullit maintained frequent and daily contact with Bockarie to discuss the ongoing military situation.[991] Bockarie gave instructions to Gullit regarding strategy and tactics,[992] and Gullit complied.[993]

331. On 6 January 1999, the attack on Freetown itself began.[994] After the capture of the State House, Gullit contacted Sam Bockarie to inform him of the capture of the city and to ask for reinforcements.[995] Gullit's forces held central Freetown for four days, until a counter-attack by ECOMOG forces weakened their position.[996] As Gullit's forces were facing increasing pressure from ECOMOG, Bockarie, in accordance with Taylor's instructions to "make the operation fearful," ordered Gullit to use terror tactics against the civilian population on the retreat from Freetown.[997] When Gullit's forces withdrew from Freetown, Bockarie instructed his forces on the outskirts of the city to ensure a secure line of retreat for the withdrawing troops.[998] The RUF/AFRC then made collaborative efforts to re-attack Freetown.[999]

332. Throughout the Freetown Invasion, Taylor and Sam Bockarie communicated by satellite phone in furtherance of the attack,[1000] enhancing Bockarie's capacity to plan, facilitate and order RUF/AFRC military operations during which crimes were committed.[1001] Bockarie was in frequent and even daily contact via radio or satellite phone with Taylor in December 1998 and January 1999, either directly or through Benjamin Yeaten.[1002] In these communications Taylor and Yeaten gave advice to Bockarie and received updates in relation to the progress of the operations in Kono and Freetown in the implementation of the Bockarie/Taylor Plan.[1003] Taylor passed along instructions to Bockarie, directing him to send prisoners released from Pademba Road Prison to RUF/AFRC controlled areas.[1004] Yeaten also travelled to Sierra Leone to meet with Bockarie in Buedu,[1005] and Bockarie frequently consulted Yeaten on operational and military decisions.[1006] Taylor also provided communications support during the Freetown Invasion, as his subordinates transmitted "448 messages" to the RUF/AFRC radio station in Buedu, which then transmitted the message to the fighters in the capital, allowing the troops to change their location and avoid attacks by ECOMOG airplanes.[1007] While Gullit's forces occupied State House, they were under air attack by ECOMOG and would receive a "448 message" from Buedu about every two hours.[1008]

333. During the Freetown Invasion and in response to Bockarie's request, Taylor supplied additional ammunition to the RUF/AFRC via Dauda Aruna Fornie.[1009] This materiel, together with materiel from the Burkina Faso Shipment and the materiel captured from ECOMOG in Kono, was used by the RUF/AFRC in the Freetown Invasion and the commission of crimes in Kono, Makeni, Freetown and the Western Area.[1010] The Trial Chamber found, based on Issa Sesay's testimony, that without the Burkina Faso Shipment, the RUF/AFRC would not have launched the initial operations on Kono, and without taking Kono, the RUF/AFRC would not have had the materiel necessary to attack other areas.[1011] The Burkina Faso Shipment was thus causally critical to the capture of the ECOMOG materiel in the operations in Kono.[1012] The RUF/AFRC had no other significant sources of materiel at this time.[1013]

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334. The RUF/AFRC military campaign to capture Freetown was marked by extreme violence and involved the commission of crimes charged in Counts 1–11 of the Indictment.[1014] Thousands of civilians were killed during the attack on Freetown and the subsequent retreat through Kissy, Upgun, Calaba Town, Allen Town, Hastings, Wellington, Waterloo and Benguema.[1015] The crimes committed during the Freetown Invasion were widely reported by international media and international organisations.[1016]

D. Post-Freetown Invasion (March 1999) to End of Indictment Period (18 January 2002)

335. In March 1999, Taylor supplied Sam Bockarie with a large shipment of materiel,[1017] which was part of a shipment of "tons of weapons and ammunition originating in Ukraine [that] were shipped to Burkina Faso from where most, but not necessarily all, were transferred in six flights in a BAC-111 aircraft owned by Leonid Minin [to Monrovia, Liberia]."[1018] In June 1999, the UN Secretary-General reported a resurgence in rebel atrocities against civilians, including executions, mutilations, amputations, abductions, sexual abuse and the large-scale destruction of property.[1019]

336. On 7 July 1999, the Lomé Peace Accord was signed by President Kabbah and Foday Sankoh.[1020] Taylor received praise from world leaders for his involvement in the peace negotiations. However, while he was involved in the peace negotiations, he was at the same time assisting the RUF/AFRC with further preparations for war.[1021] Taylor was privately engaged in arms transactions at the same time that he was publicly promoting peace.[1022]

337. The Lomé Peace Accord did not represent the end of hostilities in the territory of Sierra Leone and the disarmament process took time to eventuate.[1023] From 1999 until the end of the Indictment Period, the RUF/AFRC continued to commit crimes against civilians.[1024] Contemporary public reports documented the continuing crimes committed by the RUF/AFRC,[1025] and Taylor continued to directly and intimately participate in ECOWAS peace efforts to address the situation in Sierra Leone.[1026]

338. By April 1999, RUF/AFRC forces, under the command of Taylor's Liberian subordinate Benjamin Yeaten,[1027] were fighting alongside Liberian troops against the Liberian rebel group LURD.[1028] The RUF/AFRC sent a radio operator to Liberia who worked directly with Yeaten, in order to coordinate communications between Yeaten and the RUF/AFRC forces.[1029] In December 1999, Sam Bockarie, who strongly opposed RUF disarmament and defied orders from Sankoh to disarm,[1030] resigned from the RUF and was summoned by Taylor to leave Sierra Leone. He complied with Taylor's instructions.[1031] In May 2000, the RUF captured between 400 and 500 UNAMSIL peacekeepers in the area between Lunsar and Makeni in Sierra Leone.[1032] Shortly after this, on 8 May 2000, Foday Sankoh was arrested by the Government of Sierra Leone and incarcerated in Freetown, and Issa Sesay was then appointed as interim leader of the RUF.[1033] Taylor was asked by ECOWAS to become involved in negotiations for the release of the peacekeepers,[1034] since he "had and was seen to have a great deal of influence" over Issa Sesay and the RUF/AFRC, and he exerted this influence to effect the release of the UN peacekeepers.[1035]

339. From mid-2000 fighting between the Government of Sierra Leone and the RUF ceased almost entirely, and the RUF began to take their commitment to disarm more seriously.[1036] At this time Issa Sesay was enthusiastic about carrying out disarmament.[1037] However, from July 2000 Taylor began advising Issa Sesay not to disarm.[1038] At a meeting in Monrovia while participating in ECOWAS efforts to promote peace in Sierra Leone, Taylor told Issa Sesay to say he would disarm but then "not do it in reality," saying one thing to Sesay in front of the ECOWAS Heads of State and another to him in private.[1039] Taylor urged Issa Sesay not to listen to the Sierra Leonean Government and promised the RUF his continuing assistance, for which he gave Issa Sesay $USD 15,000.[1040] Again in mid-2001, Taylor asked Issa Sesay whether it would be safe for the RUF to disarm and advised Issa Sesay not to disarm at all.[1041] Taylor advised Sesay to not disarm in part so that RUF/AFRC fighters could participate in combat operations in Guinea and Liberia against Taylor's enemies.[1042] As he had with Sam Bockarie, in 2000 and 2001 Taylor instructed Issa Sesay to send RUF forces to fight in Liberia and Guinea against LURD forces and their allies, and Issa Sesay complied.[1043] While fighting LURD and Guinean forces in Liberia and Guinea, the RUF forces were fighting under the command of Benjamin Yeaten alongside Liberian troops.[1044] The RUF and Taylor had an interest in fighting and repelling a common enemy that was cutting the supply line between Liberia and Sierra Leone.[1045]

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340. While participating in ECOWAS efforts to promote peace in Sierra Leone, Taylor continued to provide arms and ammunition to the RUF in exchange for diamonds. Sam Bockarie travelled to Monrovia as part of the Lomé delegation and returned to Sierra Leone in or around late September to October 1999 with a helicopter of materiel supplied by Taylor.[1046] Taylor sent small supplies of arms and ammunitions to the RUF/AFRC until December 1999, through, *inter alia*, Daniel Tamba, Sampson Weah and Joseph Marzah.[1047] In May 2000, Issa Sesay travelled to Liberia and obtained arms and ammunitions from Taylor.[1048] He also made at least two trips to Liberia in the second half of 2000 and in early 2001 during which he obtained small quantities of arms and ammunition supplied by Taylor.[1049] In 2000, Albert Saidu brought back two vehicles of ammunition and medicine from Benjamin Yeaten in response to a request from Issa Sesay.[1050] Between 2000 and 2001, TF1-567 was frequently involved in the transportation of materiel provided by Taylor to the RUF.[1051] Taylor also continued to provide small quantities of arms and ammunition to the RUF in 2000 and 2001 via, *inter alia*, Marzah, Tamba, Weah, Menkarzon, Duoh and Varmoh.[1052] Taylor also made available the vehicles in which the materiel was transported and the security personnel that escorted Sam Bockarie and Issa Sesay when they picked up materiel from Monrovia and took diamonds to Taylor.[1053] Where necessary, these security escorts also facilitated the crossing of border checkpoints into or from Liberia.[1054] In addition, from at least 1999, Taylor used Liberian Government helicopters for the purposes of delivering arms and/or ammunition to the RUF/AFRC,[1055] and he sent helicopters to transport Sam Bockarie and Issa Sesay to Liberia on their trips to obtain materiel.[1056]

341. From February 1999 to January 2002 the RUF/AFRC would turn to Taylor for assistance whenever it needed materiel,[1057] and the alternative sources of materiel available were of minor importance in comparison to that supplied or facilitated by Taylor.[1058] During this period, the RUF/AFRC continued to commit crimes, even though it was not necessarily engaged in military operations.[1059] The materiel sent by Taylor to the RUF/AFRC in 1999 to 2001 was used in fighting in Sierra Leone, against Kamajors throughout 1999 and against ECOMOG and the "West Side Boys"[1060] in March to April 1999, and was part of the overall supply of materiel used by the RUF/AFRC in the commission of crimes.[1061] In the course of military engagements with Kamajors the RUF/AFRC was able to capture materiel,[1062] but not a significant amount.[1063]

342. Taylor also assisted the RUF/AFRC by providing it with a Guesthouse in Monrovia, equipped with a long-range radio and telephone, RUF radio operators, SSS security supervised by Benjamin Yeaten, cooks and a caretaker.[1064] Although the Guesthouse was used by RUF/AFRC members partly for matters relevant to the peace process or for diplomatic purposes, it was also used to facilitate the transfer of arms, ammunition and funds directly from Taylor to the RUF/AFRC, and the delivery of diamonds from the RUF/AFRC directly to Taylor, thus providing a base for the RUF/AFRC in Monrovia.[1065] After Issa Sesay assumed interim command of the RUF, Taylor also provided him with a satellite phone so that they could be in communication.[1066] This satellite phone facilitated Issa Sesay's communications capability, and enhanced Sesay's capacity to further RUF/AFRC's military operations during which crimes were committed.[1067]

343. During 1999 until his departure from Sierra Leone, Sam Bockarie made a number of trips to Monrovia to deliver diamonds to Taylor, and Eddie Kanneh and Daniel Tamba also delivered diamonds to Taylor from the RUF/AFRC.[1068] After Foday Sankoh's release and appointment as Chairman of the Commission for the Management of Strategic Resources, National Reconstruction and Development, the exchange of diamonds for arms and ammunition between Sankoh and Taylor continued until Sankoh was arrested in May 2000.[1069] During Issa Sesay's leadership of the RUF, from June 2000 until the end of hostilities in 2002, Issa Sesay delivered diamonds to Taylor,[1070] and Eddie Kanneh[1071] delivered diamonds to Taylor on Issa Sesay's behalf.[1072] Diamonds were delivered both in exchange for supplies and/or arms and ammunition and for "safekeeping" until Sankoh's release.[1073] In addition, Taylor facilitated a relationship between Issa Sesay and a diamond dealer known as Alpha Bravo in 2001 for the purpose of diamond transactions.[1074] Taylor also provided fuel and mining equipment to the RUF/AFRC,[1075] and he sent two men to visit and assess the mining operations.[1076] In 2001 Taylor gave Issa Sesay $USD 50,000 related to the diamond trade, and in 2002 Issa Sesay sent Mike Lamin and then a second delegation to retrieve a further $USD 50,000 Taylor held for the RUF/AFRC related to the diamond trade.[1077]

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VII. THE LAW OF INDIVIDUAL CRIMINAL LIABILITY

A. Introduction

344. In Grounds 11, 16, 19, 21 and 34, the Defence submits that the Trial Chamber erred in law in its articulation and/or application of the elements of individual criminal liability, specifically as to the elements of aiding and abetting liability and planning liability.

345. In this section of the Judgment, the Appeals Chamber addresses four challenges to the law articulated and applied by the Trial Chamber for aiding and abetting and planning liability.

346. First, the Appeals Chamber examines the Defence claim that the Trial Chamber erred as a matter of law in its articulation and application of the *actus reus* elements for aiding and abetting, by finding that Taylor's acts and conduct had a substantial effect on the commission of the crimes, rather than assisted the crimes "as such".[1078] The Defence further asserts that the law articulated and applied by the Trial Chamber violates the principle of personal culpability by: (i) criminalising any contribution made to a party to an armed conflict;[1079] (ii) failing to distinguish between "neutral" and "intrinsically criminal" assistance;[1080] and (iii) improperly characterising the RUF/AFRC as a criminal organisation.[1081]

347. Second, the Appeals Chamber considers the Defence contention that the Trial Chamber erred as a matter of law in its articulation and application of the *mens rea* elements for aiding and abetting, by applying a "knowledge" standard rather than a "purpose" standard in its assessment of Taylor's mental state regarding the consequence of his acts and conduct.[1082]

348. Third, for the reasons set out below,[1083] the Appeals Chamber considers whether the Trial Chamber erred as a matter of law when it held that "specific direction" was not an element of the *actus reus* for aiding and abetting liability.

349. Fourth, the Appeals Chamber addresses the Defence submission that the Trial Chamber erred as a matter of law in its articulation and application of the *actus reus* for planning by failing to require and find that Taylor planned particular "concrete crimes".[1084]

350. As with all issues of law, the Appeals Chamber looks first to the constitutive documents of the Special Court: the Agreement between the Government of Sierra Leone and the United Nations, the treaty which established the Court and which incorporates the Statute annexed thereto.[1085] The Appeals Chamber has held that the object and purpose of the Statute is that "all those who have engaged in serious violations of international humanitarian law, whatever the manner in which they may have perpetrated, or participated in the perpetration of those violations, must be brought to justice"[1086] and thereby end "the prevailing situation of impunity."[1087] The Parties to the Agreement recognised that the serious violations of international humanitarian law that took place in Sierra Leone during the conflict victimised the civilian population.[1088] In furtherance of its object and purpose, the Agreement expressly mandated the Special Court to bring to justice those who bear the greatest responsibility for the serious violations of international humanitarian law committed against the people of Sierra Leone.[1089] In his report on the establishment of the Special Court, the Secretary-General of the United Nations noted:

> The prohibition on attacks against civilians is based on the most fundamental distinction drawn in international humanitarian law between the civilian and the military and the absolute prohibition on directing attacks against the former. Its customary international law nature is, therefore, firmly established.[1090]

The prohibition and criminalisation of attacks against civilians is one of the essential principles of international humanitarian law,[1091] and this principle is firmly established in the Statute.

351. In furtherance of the express mandate of the Court, interpreted in light of the object and purpose of the Statute, Article 6(1) establishes personal culpability for participation in the commission of crimes against humanity, violations of Article 3 common to the Geneva Conventions and Additional Protocol II, and other serious violations of international humanitarian law.[1092] Article 6(1) of the Statute provides:

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> A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.

The Article establishes five ways in which individual criminal liability, consistent with the principle of personal culpability, attaches for participation in the commission of international crimes during each and every phase of the crime. Article 6(1) therefore imposes individual criminal responsibility "for acts or transactions in which a person has been personally engaged or in some other way *participated* in one or more of the five ways stated in the Article"[1093] in the commission of a crime prohibited by the Statute.[1094]

352. Article 6(1) of the Statute does not expressly establish the *actus reus* and *mens rea* elements of any of the five forms of criminal participation. In accordance with Rule 72*bis*, the "principles and rules of international customary law" are applicable laws that the Appeals Chamber has resort to in applying Article 6(1) of the Statute and giving effect to the object and purpose of the Statute.[1095] The Appeals Chamber identifies the *actus reus* and *mens rea* elements for the forms of individual criminal liability set out in Article 6(1) by ascertaining customary international law applicable at the time the crimes were committed.[1096] In this regard, it examines its own jurisprudence, the post-Second World War jurisprudence and the other authorities of international law set out in Rule 72*bis*. In addition, the Chamber looks to the jurisprudence of the ICTY and ICTR, where persuasive, for guidance.[1097]

B. Aiding and Abetting–*Actus Reus*

353. The Trial Chamber articulated the *actus reus* (objective/material/physical) elements of aiding and abetting liability as follows:

> i. The Accused provided practical assistance, encouragement, or moral support to the perpetration of a crime or underlying offence and
>
> ii. Such practical assistance, encouragement, or moral support had a substantial effect upon the commission of a crime or underlying offence.

The Trial Chamber further explained:

> An Accused may aid and abet not only by means of positive action, but also through omission.
>
> The Accused may aid and abet at one or more of the "planning, preparation or execution" stages of the crime or underlying offence. The lending of practical assistance, encouragement, or moral support may occur, before, during, or after the crime or underlying offence occurs. The *actus reus* of aiding and abetting does not require specific direction. . . .
>
> Although the practical assistance, encouragement, or moral support provided by the Accused must have a substantial effect upon the commission of the crime or underlying offence, the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the Accused's contribution.[1098]

354. In Grounds 21 and 34, the Defence alleges that the Trial Chamber erred in law in articulating and applying the *actus reus* elements of aiding and abetting liability. It presents two principal lines of argument in support. First, it argues that the Trial Chamber failed to require that Taylor's assistance was to "the crime as such", by which it means that the Trial Chamber was required to find that Taylor provided assistance to the person who committed the *actus reus* of the crime, and that the assistance was used in the commission of the crime.[1099] Second, it argues that the law articulated by the Trial Chamber violates principles of personal culpability, as it criminalises any assistance provided to a party to an armed conflict,[1100] fails to take into account the facially "neutral" character of assistance[1101] and improperly imposes individual criminal liability for membership in a criminal organisation.[1102]

355. In the Notice of Appeal, Ground 34 states that "[t]he Trial Chamber erred in law and fact in failing to require a showing that the assistance was to the crimes as such, and that it was substantial."[1103] However, in the Appeal Brief, no arguments are provided in support of this Ground of Appeal, and the Defence submits that "[n]o separate arguments are presented in respect of Ground 34, as those arguments are sufficiently expressed in the other Grounds concerning *actus reus*," presumably referring to Grounds 21–32.[1104] The Prosecution requests that the Appeals

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Chamber summarily dismiss Ground 34 for failure to comply with the Practice Direction on Structure of Grounds of Appeal.[1105]

356. The Appeals Chamber accepts the Prosecution submission that Ground 34 does not comply with the Practice Direction on Structure of Grounds of Appeal. The Appeals Chamber further notes that in Grounds 21–32, the Defence does not present a complete and coherent submission clearly setting out the alleged error of law referred to in Ground 34. Nonetheless, the Appeals Chamber requested the Parties to address in their oral submissions the Defence's complaint that the Trial Chamber erred by failing to require a showing that Taylor assisted the commission of the crimes "as such."[1106] The Appeals Chamber is satisfied that the Parties were able to provide their views on this issue in their written and oral submissions. Further, as the Appeals Chamber considers that the issue raised by the Defence in Ground 34 concerns an important issue of law, the Appeals Chamber does not consider it appropriate to summarily dismiss Ground 34 and/or the incomplete submissions made in Grounds 21–32. Accordingly, in the exercise of its discretion, the Appeals Chamber will consider under the heading of Grounds 21 and 34 the submissions disparately made in Grounds 21–32 and during the oral hearing.

1. The *Actus Reus* Elements

(a) Submissions of the Parties

357. In Grounds 21 and 34, the Defence argues that the Trial Chamber erred, as a matter of law, in considering that Taylor's assistance, encouragement and moral support enhanced or enabled the RUF/AFRC's Operational Strategy and its capacity to commit crimes, and thereby had a substantial effect on the commission of the crimes. It contends, rather, that the Trial Chamber should have directed itself to consider whether Taylor's assistance was "to the crime, as such,"[1107] by which it means that the Trial Chamber was required to find that Taylor provided assistance to the physical actor[1108] who committed the *actus reus* of the crime, and that the assistance was directly used in the perpetration of the crimes.[1109] It argues that "[t]he assistance of aiding and abetting must be given to the principal who perpetrates the crime, and to the crime itself."[1110] Further, it contends that the aider and abettor must assist the physical actor to commit a particular or specific crime.[1111] It submits that the Trial Chamber failed to find "that any of the alleged assistance was used in the perpetration of any crime under the Statute."[1112]

358. The Defence contrasts its view that the assistance must be provided to a specific crime with the Trial Chamber's finding that assistance to an organisation's "capacity" to commit crimes can satisfy the *actus reus* of aiding and abetting.[1113] As illustration of the error, it points to the Trial Chamber's conclusions that: (i) Taylor's assistance supported, sustained and enhanced the RUF/AFRC's capacity to undertake its Operational Strategy involving the commission of crimes;[1114] (ii) his assistance was critical in enabling the RUF/AFRC's Operational Strategy;[1115] and (iii) Taylor knew that his support to the RUF/AFRC would assist the commission of crimes in the implementation of the RUF/AFRC's Operational Strategy.[1116] It further identifies particular acts of assistance that it asserts were not acts of assistance to the physical actor's commission of a specific crime.[1117]

359. In support of its submissions, the Defence puts forward two lines of argument. First, it argues that its view is established in the jurisprudence on aiding and abetting liability. It contends that the caselaw of the ICTY and ICTR demonstrates that the *actus reus* of aiding and abetting liability involves criteria such as "the directness of the aider's involvement in the crime itself . . . [t]he strength of the demonstrable causal connection between the act and the crime, . . . and finally the importance of the temporal connection to the crime or, in the alternative, the lapse of time."[1118] Second, it argues that its position is necessary to distinguish aiding and abetting from joint criminal enterprise liability.[1119] The Defence submits that unless it is required that the assistance be provided to the physical actor and used in the commission of the crime, aiding and abetting becomes a form of "organisational liability". It submits that such liability is exclusively addressed through joint criminal enterprise, not aiding and abetting.[1120]

360. In response, the Prosecution submits that, while the accused's acts and conduct must have a substantial effect on the commission of the crime,[1121] there is no requirement that the assistance must be to the physical actor's commission of the specific crime and used in the commission of the specific crime. It avers that the Defence does not offer any authority in support of such a requirement.[1122] It further submits that the Trial Chamber, in determining whether Taylor's acts had a substantial effect on the commission of the crimes with which he was charged, properly

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considered the effect of those acts on the RUF/AFRC's Operational Strategy, the *modus operandi* of which was the use of terror against the civilian population of Sierra Leone and in the implementation of which the crimes were committed.[1123] It argues that the Trial Chamber properly found that "without the contributions of Charles Taylor to the AFRC/RUF alliance, the crimes charged in Counts 1 through 11 in the indictment would not have occurred. Causation is not required, but it was shown in this case."[1124]

361. The Defence replies that, contrary to the Prosecution submissions, the Trial Chamber improperly relied on organisational responsibility.[1125] It argues that the Trial Chamber "imputed to [Taylor] responsibility for crimes based on the conduct of the RUF/AFRC as an organisation, and without making any specific findings as to the perpetrator of whom he was allegedly an aider and abettor."[1126] It asserts that "[t]his was a clear legal error."[1127]

(b) Discussion

362. The Appeals Chamber recalls its prior holding that the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute and customary international law is that an accused's acts and conduct[1128] of assistance, encouragement and/or moral support had a substantial effect on the commission of each charged crime for which he is to be held responsible.[1129] The Trial Chamber properly articulated the *actus reus* elements of aiding and abetting liability in light of the Appeals Chamber's previous holdings.[1130]

363. The Defence position is that a substantial effect on the commission of the crimes is insufficient as a matter of law to establish the *actus reus* of aiding and abetting liability. The Defence submits that there is an additional *actus reus* element, namely it must also be proved that the aider and abettor provided assistance to the physical actor, and that the assistance was used in the commission of a specific crime by the physical actor. Indeed, it avers that when assessing the *actus reus* of aiding and abetting liability, the focus of the inquiry must be on the relationship between the physical actor and the accused, that is whether the alleged aider and abettor provides the physical actor of each specific crime with assistance that the physical actor used in the commission of each specific crime.[1131]

364. The Trial Chamber held that the *actus reus* is established where the accused provided assistance, encouragement or moral support at one or more of the "planning, preparation or execution" stages of the crime and thereby had a substantial effect on the commission of the crime.[1132] It accordingly considered whether it was proved that Taylor, by his acts of assistance, encouragement and moral support, had a substantial effect on the commission of each of the crimes with which he was charged.[1133]

365. As the issue presented concerns the elements of aiding and abetting liability under Article 6(1) of the Statute, the Appeals Chamber must look to the Statute and customary international law.

366. Interpreting the Statute in accordance with its plain meaning in context, in light of its object and purpose, the Appeals Chamber finds that Article 6(1) establishes individual criminal liability in terms of the accused's relationship to the *crime*, not to the physical actor. The five forms of criminal participation in Article 6(1)—including commission—are set forth independently and defined in relation to the crime. As the plain language of Article 6(1) provides, those who plan, instigate, order, commit or otherwise aid and abet the crime are equally liable for the crime on the basis of their own acts. While the Defence submits that the inquiry is whether the aider and abettor assisted the particular physical actor who committed the crime, Article 6(1) does not refer to or in any way describe personal culpability for "planning, instigating, ordering, committing or otherwise aiding and abetting" in relation to another person, whether the "principal", "perpetrator" or "physical actor". In contrast, Article 6(3) clearly establishes individual liability deriving from the criminal acts of another person, the subordinate, under certain circumstances.[1134] The differences between these statutory provisions, which effectively place Article 6(1) in context, confirm the plain language of Article 6(1).

367. In addition, Article 6(1) establishes individual criminal liability for those who otherwise aid and abet in the "planning, preparation or execution of a crime." In accordance with its plain language, aiding and abetting liability may thus be established where the accused participates in any or all stages of the crime. This is consistent with the object and purpose of Article 6(1), as it ensures personal culpability for all those who plan, instigate, order, commit or otherwise aid and abet crimes, whatever the particular manner and stage in which they participate in the crime. The Defence submission that an aider and abettor's assistance must be used by the physical actor in the

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commission of the specific crime is thus contrary to the Statute. The plain language of Article 6(1) and the object and purpose of the Statute ensure accountability for those who participate in the commission of crimes, in whatever manner and at whatever stage.[1135]

368. The Appeals Chamber has also reviewed customary international law as recognised in the jurisprudence of this Court and other international tribunals. The Appeals Chamber does not accept the Defence submission that the principle to be derived from the jurisprudence is that an aider and abettor must provide assistance to the physical actor and that the assistance must be used in the commission of the specific crime. To the contrary, the Appeals Chamber has held that in respect of the *actus reus* of aiding and abetting liability, the essential question is whether the acts and conduct of an accused can be said to have had a substantial effect on the commission of the crime charged.[1136] This applies equally to personal culpability for ordering,[1137] planning[1138] and instigating[1139] the commission of crimes. Accordingly, the principle articulated by this and other Appeals Chambers is that the *actus reus* of aiding and abetting liability is established by assistance, encouragement or moral support that has a substantial effect on the crimes, not the particular manner in which such assistance is provided. This principle is in recognition of the variety of fact patterns which confront triers of fact.

369. Aiding and abetting liability has attached to those who have provided assistance, encouragement or moral support to a variety of different crimes in a variety of contexts. Confirmed convictions for aiding and abetting liability have been entered for: the rape of a single victim;[1140] attacks on peacekeepers;[1141] detention, ill-treatment and forcible transfer throughout a municipality;[1142] killings, torture, destruction of homes and religious institutions and persecution in a region;[1143] persecution throughout a State;[1144] a genocide.[1145] The acts and conduct of those convicted had a substantial effect on the commission of crimes in an infinite variety of ways. An accused's acts and conduct can have a substantial effect by providing weapons and ammunition, vehicles and fuel or personnel,[1146] or by standing guard, transporting perpetrators to the crime site, establishing roadblocks, escorting victims to crime sites or falsely encouraging victims to seek refuge at an execution site.[1147] Such variety also includes providing financial support to an organisation committing crimes, expelling tenants, dismissing employees, denying victims refuge or identifying a victim as a member of the targeted group.[1148] Senior officials' acts and conduct can have a substantial effect on the commission of crimes by signing decrees, attending meetings and issuing reports, allowing troops to be used to assist and commit crimes, demanding slave labour to satisfy the needs of industries, issuing directives and drafting laws, endorsing official decisions to disarm victim groups, working together with the police, army and paramilitaries to maintain a system of unlawful arrests and detention, or deliberately not providing adequate medical care to detention facilities.[1149] In other cases, the acts or conduct of accused persons found to have had a substantial effect on crimes include making a speech to a crowd of listeners encouraging them to commit crimes, implementing a media campaign to arouse hatred against a group or being an approving spectator at the scene of a crime,[1150] or by burying bodies, cremating bodies or conserving looted property.[1151] The acts and conduct of an accountant, architect or dentist in their respective professional roles can have a substantial effect on the commission of crimes,[1152] as can those of prosecutors, judges[1153] and religious officials.[1154]

370. In submitting that certain specific cases[1155] support the proposition that the aider and abettor must provide assistance to the physical actor and that this assistance must be used in the commission of the crime, the Defence has mistaken issues of fact for issues of law.[1156] The findings in the cases on which the Defence relies demonstrate the manner in which those accused had a substantial effect on the commission of the crimes; they support the proposition that the *actus reus* of aiding and abetting liability is only established where another accused assisted the crimes in that same manner. For example, the Appeals Chamber has held that "acts of aiding and abetting can be made at a time and place removed from the actual crime" if the acts have a substantial effect on the commission of the crime.[1157] This Appeals Chamber also held that, for those alleged to have encouraged or provided moral support to the commission of the crime by being an "approving spectator" at the scene of the crime, "[i]t may be that, in practice, the aider and abettor will be superior to, or have control over, the principal perpetrator; however, this is not a condition required by law."[1158] The Appeals Chamber agrees with the ICTY Appeals Chambers that "a defendant may be convicted for having aided and abetted a crime even if the principal perpetrators have not been tried or identified,"[1159] and that "it is not required as an element of aiding and abetting liability that the principal perpetrators know of the aider and abettor's existence or of his assistance to them."[1160] The Appeals Chamber further agrees that for aiding and abetting liability, "it is not necessary as a matter of law to establish whether [the accused]

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had any power to control those who committed the offences."[1161] As the Appeals Chamber, as well as the ICTY and ICTR Appeals Chambers, have consistently emphasised, whether an accused's acts and conduct had a substantial effect on the commission of the crime "is to be assessed on a case-by-case basis in light of the evidence as a whole."[1162] The manner in which an accused may aid and abet crimes can vary, and the trier of fact must consider the specific facts of the case to determine whether an accused's acts and conduct assisted, encouraged or provided moral support to and had a substantial effect on the commission of the crimes. The Defence submission that the Trial Chamber erred in law by failing to make "any specific findings as to the perpetrator of whom [Taylor] was allegedly an aider and abettor"[1163] is contrary to these consistent holdings, and must accordingly be rejected.

371. A thorough review of the caselaw, which is now examined, demonstrates that applying customary international law to the specific facts of individual cases, this Court and other international tribunals have consistently required, when considering a variety of fact patterns, that an accused's acts and conduct had a substantial effect on the commission of the crimes for which he is to be held individually criminally liable. International tribunals have never required that, as a matter of law, an aider and abettor must provide assistance to the crime in a particular manner, such as providing assistance to the physical actor that is then used in the commission of the crime. The Appeals Chamber recalls that as illustration of the Trial Chamber's alleged error of law, the Defence highlighted the Trial Chamber's conclusions that Taylor's assistance supported, sustained and enhanced the RUF/AFRC's capacity to undertake its Operational Strategy,[1164] and that his assistance was critical in enabling the RUF/AFRC's Operational Strategy.[1165] The Appeals Chamber notes that based on similar findings, the Chambers and Tribunals in the cases discussed below found that the *actus reus* of aiding and abetting liability was established. In addition, these cases involve convictions for a range of crimes and criminal activity, including specific crimes, such as murders, as well as acts of persecution and genocide.

372. In *Brima et al.*, this Chamber found that one of the accused, Kanu, was responsible for aiding and abetting a system of sexual slavery and forced labour.[1166] The Chamber held that his acts and conduct satisfied the *actus reus* of aiding and abetting because he supported and sustained the organised commission of crimes and thereby provided practical assistance to the crimes.[1167] The Appeals Chamber did not require that Kanu provided assistance in a particular manner.

373. In the *Brđanin* case, the ICTY Trial Chamber found that the Bosnian Serb leadership adopted a Strategic Plan to gain control over territories,[1168] and that the crimes committed by Bosnian Serb forces during the indictment period "occurred as a direct result of the over-arching Strategic Plan."[1169] It convicted Brđanin[1170] for aiding and abetting the crimes committed in context of the armed attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods,[1171] including killings, torture, destruction of homes and religious buildings, appropriation of property and humiliation and degradation. It found that as President of the ARK Crisis Staff, Brđanin issued "governmental" decisions that non-Serbs should disarm,[1172] which made non-Serb civilians more vulnerable and less able to defend themselves from attacks by Bosnian Serb forces implementing the Strategic Plan[1173] and also provided a pretext for attacks.[1174] The Trial Chamber concluded that the decisions for non-Serbs to disarm had a substantial effect on the crimes committed in the course of such attacks.[1175] It further concluded that Brđanin aided and abetted crimes of persecution committed on a widespread and systematic scale, finding that he "aided and abetted the maintenance of a system in which Bosnian Muslims and Bosnian Croats were unable to seek legal redress" for their illegal detention and the appropriation of their property[1176] and "actively aided and abetted the setting up of impediments for Bosnian Muslims and Bosnian Croats to move around freely."[1177] The ICTY Appeals Chamber affirmed the convictions and the Trial Chamber's findings that Brđanin's acts and conduct had a substantial effect on the commission of the crimes for which he was convicted.[1178]

374. Brđanin was convicted of aiding and abetting crimes because he supported and enabled attacks by Bosnian Serb forces in the implementation of the Strategic Plan. By issuing governmental decisions impacting the *victim population* of the crimes, Brđanin had a substantial effect on the commission of the crimes, establishing the *actus reus* of aiding and abetting liability. The ICTY Trial Chamber did not find that each victim of these crimes disarmed as a result of Brđanin's acts or that Brđanin's acts played a direct role in each crime.[1179] Rather, it considered the cumulative effect of his acts on the ability of the Bosnian Serb forces to commit the crimes, and he was held liable for having an indirect, but substantial effect on the crimes.[1180] This is further underscored by the findings that

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Brđanin "aid[ed] and abet[ed] the maintenance of a system" of persecution and thereby supported and sustained the functioning of the organised commission of crimes.[1181]

375. While the Defence cites the ICTY case of *Blagojević and Jokić*, this case is in fact contrary to the Defence position.[1182] The Trial Chamber found Blagojević liable for aiding and abetting crimes where he "permitted the use of personnel or resources to facilitate the commission of these crimes."[1183] The personnel attributable to Blagojević did not perpetrate the crimes themselves. Blagojević's acts and conduct assisted and had a substantial effect on the crimes because the personnel attributable to him participated in guarding and detaining the eventual victims.[1184] The ICTY Appeals Chamber's reasoning in *Krstić*, where it convicted the accused of aiding and abetting crimes of genocide, is also instructive in this respect:

> As has been found above, it was reasonable for the Trial Chamber to conclude that, at least from 15 July 1995, Radislav Krstić had knowledge of the genocidal intent of some of the Members of the VRS Main Staff. Radislav Krstić was aware that *the Main Staff had insufficient resources of its own to carry out the executions* and that, without the use of Drina Corps resources, *the Main Staff would not have been able to implement its genocidal plan*. Krstić knew that by allowing Drina Corps resources to be used he was making a substantial contribution to the execution of the Bosnian Muslim prisoners. Although the evidence suggests that Radislav Krstić was not a supporter of that plan, as Commander of the Drina Corps he permitted the Main Staff to call upon Drina Corps resources and to employ those resources.[1185]

The acts and conduct of Krstić and Blagojević were found to have assisted and had a substantial effect on the crimes for which they were convicted because they supported and enhanced the capacity of the VRS Main Staff—with whom they did not share a common purpose[1186]—to carry out its plan to commit crimes against the civilian population of Srebrenica. The Chambers in both *Blagojević and Jokić* and *Krstić* thus found that the *actus reus* of aiding and abetting liability was established where the accused's acts and conduct had a substantial effect on the commission of the crimes, and did not require that the accused provided assistance in a particular manner, such as to the physical actor who then uses the assistance in the commission of the specific crime.

376. In *Simić et al.*, the ICTY Appeals Chamber convicted Simić of aiding and abetting persecution in respect of unlawful arrests and the detention of non-Serb civilians.[1187] The Trial Chamber found that Simić worked together with the police, paramilitaries and JNA to maintain a system of crimes in the form of unlawful arrests and detention of non-Serb civilians.[1188] On appeal, Simić argued that "accepting the Trial Chamber's findings as they stand, they do not disclose any sufficient basis of evidence for (*sic*) linking him with the acts in any way."[1189] The ICTY Appeals Chamber rejected this submission, concluding that the findings that there was a system of arrests and detention and that Simić had strong influence demonstrate "that he lent *positive* assistance to [the crimes]"[1190] and further "lent substantial assistance to the perpetration of these underlying acts of persecutions."[1191] The *actus reus* of aiding and abetting liability was thus established because Simić participated in, supported and sustained "the system of arrests and detention", and thereby his acts and conduct had a substantial effect on those crimes.[1192]

377. The post-Second World War caselaw is also instructive on the application of the principle that the *actus reus* of aiding and abetting liability is established by assistance that has a substantial effect on the crimes, not the particular manner in which such assistance is provided. As these courts were confronted with the organised commission of crimes on a large-scale, this caselaw is replete with examples demonstrating the variety of ways in which persons can be found to have culpably assisted the commission of crimes.[1193]

378. In *Becker, Weber and 18 Others*, tried before the French Permanent Military Tribunal, the accused, present in France, were convicted as accomplices of killings that took place in Germany in which they had no direct role.[1194] In *Roechling*, the French Superior Military Government Court found:

> Hermann Roechling and the other accused members of the Directorate of the Voelklingen works are not accused of having ordered this horrible treatment, but of having permitted it; and indeed supported it, and in addition, of not having done their utmost to put an end to these abuses. *In adopting this attitude they permitted the continued existence and further development of this inhuman situation and thus, particularly through this tolerance, participated in the maltreatment within the meaning of Law No. 10.*[1195]

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In *Ministries*, Tribunal IV found:

> Nor are we impressed with [Berger's] defense that these recruits were used for exterior guard duty only, and therefore were not responsible for the atrocities committed within the camps. . . . If we are to assume that his statements were true, nevertheless he is not thereby relieved of responsibility. . . . The defendant furnished the exterior guards and if, as we find to be the fact, these camps were of the character just described and the defendant knew of it, which we also find to be the fact, he participated in the crime. *The fact, if it be a fact, that neither he nor the guards participated in shootings, beatings, starvations, and other maltreatment can only be considered, if at all, in mitigation of the offense*.[1196]

In *Flick*, Tribunal IV found:

> An organization which on a large scale is responsible for such crimes can be nothing else than criminal. *One who knowingly by his influence and money contributes to the support thereof must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes*.[1197]
>
> It remains clear from the evidence that [the accused] gave to Himmler, the Reich Leader SS, a blank check. *His criminal organization was maintained and we have no doubt that some of this money went to its maintenance. It seems to be immaterial whether it was spent on salaries or for lethal gas*. So we are compelled to find from the evidence that both defendants are guilty on count four.[1198]

379. As Tribunal III held in the *Justice* Case:

> The material facts which must be proved in [this] case are (1) the fact of the great pattern or plan of racial persecution and extermination; and (2) specific conduct of the individual defendant in furtherance of the plan. *This is but an application of general concepts of criminal law*. The person who persuades another to commit murder, the person who furnishes the lethal weapon for the purpose of its commission, and the person who pulls the trigger are all principals or accessories to the crime.[1199]

In the *Justice* Case, the accused were charged and found guilty for their knowing participation in the organised commission of crimes in the implementation of different policies and programs.[1200] The Tribunal assessed the accused's participation in each of the programs, which was as a matter of fact that demonstrated the culpable effect of their acts or conduct on the relevant crimes.[1201] The Tribunal described their participation as, *inter alia*, aiding, abetting and being connected with plans or enterprises involving the commission of crimes.[1202]

380. As these Judgments, as well as those such as *Farben*,[1203] demonstrate, the post-Second World War tribunals recognised that the essential question when determining whether an accused culpably assisted the commission of the crimes is the effect of the accused's assistance on the commission of the crimes, not the manner in which such assistance was provided.

381. Notwithstanding the jurisprudence discussed above, the Defence submits, in effect, that the manner in which an accused can assist the commission of crimes in order to establish the *actus reus* of aiding and abetting liability must be limited as a matter of law to distinguish aiding and abetting from joint criminal enterprise liability. It submits that "organisational liability" is addressed exclusively through joint criminal enterprise, not aiding and abetting,[1204] and that the Trial Chamber improperly considered the effect of Taylor's acts and conduct in the context of the activities of an organisation, the RUF/AFRC.

382. The Defence reasoning is flawed, as it begins from the premise that aiding and abetting addresses certain factual circumstances and joint criminal enterprise addresses other factual circumstances. However, joint criminal enterprise is distinguished from other forms of criminal participation by its legal elements. Joint criminal enterprise, as a unique form of enterprise or common purpose liability, is particularly characterised by the legal requirement of a common criminal purpose.[1205] This common criminal purpose justifies holding an accused liable not only for his own contribution to the commission of crimes, but also for the contributions of those with whom he shares a common purpose.[1206] The forms of criminal participation expressly provided in Article 6(1) are distinct from joint criminal enterprise in their legal elements and the consequent assignment of criminal liability, as for aiding and abetting an accused is only held liable for his own contributions to the commission of the crimes.[1207]

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383. The Appeals Chamber further notes that individual criminal responsibility for aiding and abetting the planning, preparation or execution of a crime, as *expressly* provided for in Article 6(1), is unquestionably well-established and fundamental in customary international law.[1208] Article 6(1) applies to the crimes provided in Articles 2–4 of the Statute. In this respect, Article 2 of the Statute, crimes against humanity, specifically defines crimes committed either on a large-scale or in an organised manner. The essence of crimes against humanity is a systematic policy of a certain scale and gravity directed against the civilian population,[1209] and in practice, these crimes are often committed by organised groups.[1210] Articles 1 of the Agreement and Statute, respectively, further recognise the multiplicity of actors in the commission of crimes over which this Court has jurisdiction: the Prosecutor has the responsibility to prosecute those who bear the greatest responsibility for serious violations of international humanitarian law in Sierra Leone.[1211] In the view of the Appeals Chamber, aiding and abetting liability, specifically provided for in Article 6(1) of the Statute, was understood by the Parties to the Agreement to appropriately apply to those most responsible for the large-scale and organised commission of crimes against the civilian population of Sierra Leone.

384. This conclusion is confirmed by the jurisprudence. The cases, especially *Brđanin*, *Krstić* and *Blagojević and Jokić*, discussed above have applied aiding and abetting liability to large-scale crimes committed by organised groups of individuals.[1212] The Appeals Chamber also notes that the jurisprudence demonstrates that accused can be found liable for aiding and abetting crimes that other accused are found liable for under joint criminal enterprise. As a matter of law and fact, aiding and abetting convictions can co-exist with findings that a plurality of persons shared a common criminal purpose that embraced the same crimes that an accused aided and abetted.[1213] In cases such as *Krstić*, *Blagojević and Jokić* and *Simić et al.*, the accused were specifically found not to share the common criminal purpose and not to be "members" of the joint criminal enterprise, but were still convicted of aiding and abetting crimes that were committed in furtherance of the joint criminal enterprise. In the *Ministries* Case, the accused were acquitted, on the merits, of common purpose liability for the commission of crimes against humanity and war crimes.[1214] The accused in the *Hostage* Case were also found on the merits not to have participated in a preconceived plan.[1215] In the *Justice* Case, the Tribunal did not find that the accused shared a common purpose with one another or with the originators of the program of racial persecution.[1216] The accused were only convicted for the crimes on which their acts and conduct had a substantial effect, not simply all crimes committed pursuant to the common purpose.[1217] In comparison, common purpose liability was clearly charged and found in other cases.[1218]

385. Where the evidence establishes that the crimes were committed in the implementation of a plan, program, policy or strategy to commit such crimes, the crimes were committed, as a matter of fact, not by the physical actors alone, but by the organised participation and contributions of many persons. In accordance with the Statute and customary international law, triers of fact are required to consider whether, by assisting, encouraging or supporting the planning, preparation or execution of the plan, program, policy or strategy, an accused's acts and conduct thereby had a substantial effect on some or all of the crimes committed in furtherance of the plan, program, policy or strategy. That an accused's acts and conduct had a substantial effect on the commission of the crimes establishes the requisite *actus reus* for aiding and abetting liability, not the manner in which an accused assisted the commission of the crimes. In the Appeals Chamber's view, this was the assessment performed in the cases discussed and by the Trial Chamber here.

2. Alleged Violations of the Principle of Personal Culpability

386. In Ground 21, the Defence submits that the law as articulated and applied by the Trial Chamber with respect to the *actus reus* of aiding and abetting liability violates the principle of personal culpability.[1219] The Defence puts forward the following three complaints, which will be addressed in turn below: the Trial Chamber's approach (i) criminalised any contribution to a party to an armed conflict;[1220] (ii) failed to distinguish between "neutral" and "intrinsically criminal" assistance;[1221] and (iii) characterised the RUF/AFRC as a criminal organisation.[1222]

387. The Appeals Chamber has previously held that "the foundation of criminal responsibility is the principle of personal culpability: nobody may be held criminally responsible for acts or transactions in which he has not

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personally engaged or in some other way participated."[1223] The Appeals Chamber understands the Defence submissions as contending that the law as articulated and applied by the Trial Chamber fails to establish personal culpability.[1224]

(a) Whether the Trial Chamber's Approach Criminalises Any Contribution to a Party to an Armed Conflict

(i) Submissions of the Parties

388. In Ground 21, the Defence posits that crimes are committed in any armed conflict.[1225] It asserts that any assistance to a party to an armed conflict, particularly when viewed in the aggregate, would contribute to the commission of at least some crime. It submits that the *actus reus* standard of aiding and abetting applied by the Trial Chamber would mean that any assistance to the parties to an armed conflict would constitute aiding and abetting any crimes committed.[1226] It contends accordingly that the law articulated by the Trial Chamber is not consistent with the principle of personal culpability.[1227]

389. The Prosecution responds that the hypothetical situations the Defence raises are irrelevant and misplaced, and that the Trial Chamber properly applied the law and found that Taylor's acts and conduct had a substantial effect on the commission of the crimes charged.[1228]

(ii) Discussion

390. It is fundamental in international criminal law that an accused may only be punished for his criminal conduct.[1229] As articulated by the Trial Chamber and affirmed above, the *actus reus* of aiding and abetting liability under customary international law requires that an accused's acts and conduct have a *substantial* effect on the commission of the crimes.[1230] This requirement ensures that there is a sufficient causal link—a criminal link—between the accused and the commission of the crime before an accused's conduct may be adjudged criminal. The jurisprudence is replete with examples of acts that may have had some effect on the commission of the crime, but which were found not to have a sufficient effect on the crime for individual criminal liability to attach.[1231]

391. The Appeals Chamber further observes that the causal link between the accused's acts and conduct and the commission of the crime is to be assessed on a case-by-case basis: this case-by-case assessment ensures both that the culpable are properly held responsible for their acts and that the innocent are not unjustly held liable for the acts of others. Merely providing the means to commit a crime is not sufficient to establish that an accused's conduct was criminal.[1232] Where the crime is an isolated act, the very fungibility of the means may establish that the accused is not sufficiently connected to the commission of the crime. Similarly, on the facts of a case, an accused's contribution to the causal stream leading to the commission of the crime may be insignificant or insubstantial, precluding a finding that his acts and conduct had a substantial effect on the crimes.[1233] In terms of the effect of an accused's acts and conduct on the commission of the crime through his assistance to a group or organisation, there is a readily apparent difference between an isolated crime and a crime committed in furtherance of a widespread and systematic attack on the civilian population. The jurisprudence provides further guidance, but it is the differences between the facts of given cases that are decisive.

392. The Appeals Chamber concludes that the requirement that an accused's acts and conduct must have a substantial effect on the commission of the crimes to be held criminally responsible for those crimes, as articulated by the Trial Chamber, is in accordance with principles of personal culpability. The Appeals Chamber further holds that this requirement is sufficient to ensure distinctions between those who may have had an effect on non-criminal activity and those who had a substantial effect on crimes, when applied to the facts of a given case.

(b) Whether the Trial Chamber's Approach Failed to Distinguish between "Neutral" and "Intrinsically Criminal" Assistance

(i) The Parties' Submissions

393. In Ground 21, the Defence submits that the law articulated by the Trial Chamber fails to account for the fact that the assistance Taylor provided to the RUF/AFRC was "neutral in its nature relative to the crimes" and was

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appropriate for the purpose of waging war.[1234] It contends accordingly that the law improperly criminalises non-criminal conduct in violation of principles of personal culpability.[1235]

394. The Prosecution responds that the Trial Chamber found, based on the evidence, that Taylor's assistance was not neutral, as Taylor provided materiel and other support to the RUF/AFRC, whose Operational Strategy involved the commission of a terror campaign against the civilian population.[1236] It further submits that Taylor conflates *jus ad bellum* and *jus in bello*, since an accused can be held criminally responsible for crimes committed in otherwise lawful activity.[1237]

(ii) Discussion

395. The law articulated and applied by the Trial Chamber requires that the assistance provided has a substantial effect on the commission of a crime. How any assistance *could be* used is a speculative question: perfectly innocuous items, such as satellite phones, could be used to assist the commission of crimes, while instruments of violence could be used lawfully. The distinction between criminal and non-criminal acts of assistance is not drawn on the basis of the act in the abstract, but on its effect in fact.[1238] Applying the law, the Trial Chamber inquired whether the evidence demonstrated that the assistance and support Taylor provided had a substantial effect on the commission of the crimes. On the facts, the Trial Chamber found that the arms and ammunition, military personnel, operational support and advice and encouragement Taylor provided had a substantial effect on the commission of the crimes.[1239]

(c) Whether the Trial Chamber's Approach Characterised the RUF/AFRC as a Criminal Organisation

(i) Submissions of the Parties

396. In Ground 21, the Defence submits that the Trial Chamber improperly convicted Taylor on the basis of its declaration that the RUF/AFRC was a "criminal organisation", thereby disregarding the principle and standards of individual personal culpability.[1240] It notes that international criminal law is founded on personal, not collective, responsibility, and submits that declaring entire parties to armed conflicts to be criminal as such is collective responsibility in violation of fundamental principles of personal culpability.[1241]

397. The Prosecution replies that the Defence claim is incorrect.[1242] It submits that the Trial Chamber did not convict Taylor on the basis of his "membership" in the RUF/AFRC, but rather his conduct in providing assistance aware that it would facilitate the implementation of the RUF/AFRC Operational Strategy.[1243] It avers that based on its assessment of the totality of the evidence, the Trial Chamber reasonably concluded that the waging of a campaign of terror against the civilian population of Sierra Leone was the primary *modus operandi* of the RUF/AFRC's Operational Strategy.[1244]

(ii) Discussion

398. "Criminal organisation" liability is a term of art in international criminal law. Articles 9 and 10 of the IMT Charter provided that the International Military Tribunal could declare a group or organisation a "criminal organisation," and that individuals could then be brought to trial for the substantive crime of membership in that criminal organisation. Article II(1)(d) of Control Council Law No. 10 established that membership in a criminal organisation was a crime, and Article II(2)(e) further established individual criminal liability for crimes where the accused "was a member of any organization or group connected with the commission of any such crime." However, this is not the law of the Special Court.

399. The Appeals Chamber has examined the Trial Judgment and concludes that the Trial Chamber did not find that the RUF/AFRC was a "criminal organisation" or characterise it as such. The Trial Chamber specifically recalled that "war is not *per se* a crime under the Special Court Statute."[1245] It did find that at all times relevant to the Indictment, the Prosecution had proved beyond a reasonable doubt that the RUF/AFRC directed a widespread and systematic attack against the civilian population of Sierra Leone, based on the large number of victims, the geographic scope of the crimes, the pattern of violence and the organisation of violence.[1246] It further found that the RUF/AFRC's Operational Strategy involved a campaign of crimes against the civilian population of Sierra Leone, using terror as the primary *modus operandi*, in order to achieve the RUF/AFRC's political and military goals at any civilian cost.[1247] The Appeals Chamber has affirmed these findings.[1248]

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400. Personal culpability requires that an accused can only be held liable for his own conduct and only when the *actus reus* and *mens rea* elements of participation in the commission of the crimes are proved beyond a reasonable doubt. The Appeals Chamber holds without hesitation that the convictions entered by the Trial Chamber are fully in accordance with those strict requirements.

3. Conclusion

401. Having considered the Statute and customary international law, the Appeals Chamber finds that the *actus reus* of aiding and abetting liability is established by assistance that has a substantial effect on the crime, not by the particular manner in which such assistance is provided. The Appeals Chamber does not accept the Defence submission that the Trial Chamber was required to find that Taylor provided assistance to the physical actor who committed the *actus reus* of each specific underlying crime or that such assistance was used by the physical actor in the commission of each specific crime. The Appeals Chamber accordingly affirms its prior holding that the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute and customary international law is that an accused's acts and conduct of assistance, encouragement and/or moral support had a substantial effect on the commission of each crime charged for which he is to be held responsible.

402. The Appeals Chamber concludes that the law articulated and applied by the Trial Chamber is in accordance with the principle of personal culpability.

C. Aiding and Abetting–*Mens Rea*

403. The Trial Chamber articulated the *mens rea* (mental) elements of aiding and abetting liability as follows:

> i. The Accused performed an act with the knowledge that such act would assist the commission of a crime or underlying offence, or that he was aware of the substantial likelihood that his acts would assist the commission of underlying offence; and
>
> ii. The Accused is aware of the essential elements of the crime committed by the principal offender, including the state of mind of the principal offender.[1249]

The Trial Chamber further explained that:

> Although the lending of practical assistance, encouragement, or moral support must itself be intentional, the intent to commit the crime or underlying offence is not required. Instead, the Accused must have knowledge that his acts or omissions assist the perpetrator in the commission of the crime or underlying offence. Such knowledge may be inferred from the circumstances. The Accused must be aware, at a minimum, of the essential elements of the substantive crime or underlying offence for which he is charged with responsibility as an aider and abettor. The requirement that the aider and abettor need merely know of the perpetrator's intent—and need not share it—applies equally to specific-intent crimes or underlying offences such as persecution as a crime against humanity.[1250]

404. The two elements articulated by the Trial Chamber relate to, first, an accused's mental state regarding the consequence of his acts or conduct ("knowledge, or awareness of the substantial likelihood, that such act or conduct would assist the commission of a crime") and, second, an accused's mental state regarding the factual circumstances of the underlying crime ("aware of the essential elements of the crime").

405. In Grounds 16, 19 and 21, the Defence alleges that the Trial Chamber erred in law in articulating the *mens rea* elements of aiding and abetting liability. It presents two principal lines of argument in support. First, it argues that the Trial Chamber erred in law by adopting and applying a "knowledge" standard for an accused's mental state regarding the consequence of his acts or conduct, as a component of *mens rea*. Second, it argues that the law articulated by the Trial Chamber violates the principle of personal culpability.

406. Ground 18 states as follows: "The Trial Chamber erred in law and in fact in inferring that assistance provided to the RUF or AFRC, with an awareness of crimes that were committed in the past by some RUF or AFRC soldiers, constituted aiding and abetting of any and all subsequent crimes committed by a soldier affiliated, or in alliance, with the RUF or AFRC."[1251] In its Appeal Brief, the Defence did not present separate arguments in relation to Ground 18, submitting that "those arguments are sufficiently expressed in the other Grounds concerning *mens*

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rea. The ground of appeal is nevertheless maintained on the basis of those arguments."[1252] The Ground does not comply with the Practice Direction on the Structure of Grounds of Appeal, and further, it is vague and does not identify specifically the challenged finding. The Appeals Chamber is satisfied that the submissions referred to are fully presented and argued in the Defence's other Grounds, and that Ground 18 does not supplement those submissions in any way. Ground 18 is accordingly summarily dismissed.

1. Mental State Regarding Consequence

(a) Submissions of the Parties

407. In Ground 16, the Defence argues that the Trial Chamber erred in law by adopting and applying a "knowledge" standard for an accused's mental state regarding the consequence of his acts or conduct, as a component of *mens rea*.[1253] It submits that the standard applied by the Trial Chamber is not reflected in customary international law and that "knowledge" of the consequence is a necessary but not sufficient condition to incur aiding and abetting liability.[1254] The Defence advances three arguments in support of its contention that the knowledge standard is unsupported by customary international law.

408. First, it argues that the adoption of the "purpose" standard set out in Article 25(3)(c) of the Rome Statute demonstrates the absence of state practice and *opinio juris* accepting the legal standard applied by the Trial Chamber, as does the standards proposed in the ILC's Draft Articles on Responsibility for Internationally Wrongful Acts.[1255] Second, it submits that the ICTY's jurisprudence holding that "knowledge" of the consequence is sufficient for aiding and abetting liability is "manifestly incorrect."[1256] It contends that the sources relied on in that jurisprudence, particularly the *Furundžija* Trial Judgment, do not show practice and *opinio juris* establishing that "knowledge" of the consequence is sufficient for aiding and abetting liability.[1257] In particular, it submits that the *Furundžija* Trial Chamber's discussion of post-Second World War jurisprudence is "manifestly incorrect, incomplete and insufficient."[1258] Finally, it argues that State domestic practice supports the conclusion that customary international law at the relevant time required "purpose" for aiding and abetting liability,[1259] and cites examples of domestic jurisdictions requiring or applying a "purpose" standard to an accused's mental state regarding the consequence of his acts or conduct.[1260] The Defence concludes that "[t]he *opinio juris* of States has coalesced around the purpose standard set out in Article 25(3)(c). Even assuming that there is still some doubt about that, one point is beyond doubt: the *opinio juris* of States has not coalesced around a knowledge standard of *mens rea* for aiding and abetting."[1261]

409. The Prosecution responds that this Court, the ICTY and the ICTR correctly interpreted the post-Second World War jurisprudence and correctly applied the standard in relation to an accused's mental state as established in international customary law operative during the Indictment Period.[1262] It also contends that the Defence's argument is flawed in three respects:[1263] first, the Rome Statute in general, and the Article 25(3) liability scheme in particular, were never meant to codify customary international law;[1264] second, the Rome Statute does not define the term "purpose;"[1265] and third, the Rome Statute liability scheme is distinct from that of the Special Court Statute and the statutes of the *ad hoc* Tribunals, and that the form of criminal participation set out in Article 25(3)(c) of the Rome Statute is similar but not identical to "aiding and abetting" liability in Article 6(1) of the Statute.[1266] It further submits that aiding and abetting liability under Article 6(1) is similar to the form of criminal participation set out in Article 25(3)(d) of the Rome Statute, and that under Article 25(3)(d) of the Rome Statute knowledge of the consequence is culpable *mens rea*.[1267]

410. The Defence replies that the post-Second World War cases relied upon by the Prosecution do not concern aiding and abetting or accessorial liability.[1268] It also submits that the Prosecution's reliance on Article 25(3)(d) of the Rome Statue is erroneous as this provision "does not concern aiding and abetting liability, but rather a fundamentally different and separate form of liability."[1269]

411. In addition to these submissions, the Defence argues that the Trial Chamber erred in law by adopting an "awareness of the substantial likelihood" standard for an accused's mental state regarding the consequence of his acts or conduct.[1270] In support, it contends that the ICTY's jurisprudence provides that an accused must have "actual knowledge" regarding the consequence of his acts or conduct.[1271] The Prosecution responds that the "substantial likelihood" standard has been correctly and consistently applied by this Appeals Chamber and therefore should not

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be disturbed.[1272] According to the Prosecution, the "actual knowledge" standard suggested by the Defence is incorrect as "[w]hen dealing with future events, no one can have absolute certainty."[1273] In addition, a certainty standard is not required for instigating, ordering and planning and it would make no sense to impose such a standard for aiding and abetting.[1274]

412. Finally, in Ground 16 the Defence argues that the *mens rea* "always requires as a minimum that the accused know the character of the *actus reus*,"[1275] and that the Trial Chamber erred in not requiring proof that Taylor knew that his acts would "substantially" assist the commission of crimes.[1276] The Prosecution responds that the Defence's argument that an accused not only needs to be aware that he was contributing to the crime but also needs to be "aware that his actions constituted a *substantial* contribution" contradicts all the jurisprudence defining the *mens rea* for aiding and abetting.[1277] The Defence replies that customary international law requires that the accused must have the requisite *mens rea* in relation to the consequence of the *actus reus*.[1278]

(b) Discussion

413. The Defence argues that the caselaw of the Special Court and the ICTY jurisprudence relied upon by the Trial Chamber in applying a "knowledge" standard to an accused's mental state regarding the consequence of his acts or conduct is manifestly incorrect and that Article 25(3) of the Rome Statute was not addressed in that caselaw.[1279] It further states that the Appeals Chamber has never been directly confronted with a challenge to its articulation of the *mens rea* elements of aiding and abetting, and that the issue now raised is "therefore a matter of first impression for this Court."[1280]

414. The Appeals Chamber does not accept that the *mens rea* of aiding and abetting liability is a matter of first impression for this Court.[1281] The Appeals Chamber, guided by the caselaw of the ICTY[1282] and ICTR[1283] Appeals Chambers, has consistently held that for aiding and abetting liability under Article 6(1) of the Statute and customary international law, the requisite standard for an accused's mental state regarding the consequence of his acts or conduct is as follows:

> the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator.[1284]

415. In broad terms, *mens rea* (subjective element) describes an accused's mental state at the time he performs the *actus reus* (objective element). While *mens rea* properly covers different elements,[1285] the only issue presented here concerns an accused's mental state regarding the consequence of his acts or conduct.[1286] In this case, the Trial Chamber found that Taylor provided assistance, encouragement and moral support to the RUF/AFRC *knowing* that his acts and conduct would assist the commission of the crimes, that is, that he knew the consequence of his acts and conduct would be to have an effect on the commission of the crimes.[1287] The Defence contests this finding, arguing that the Trial Chamber was required to find that Taylor *willed*, *desired* or *had the conscious object* that his acts and conduct would assist the commission of the crime,[1288] that is, that he willed or had the conscious object that the consequence of his acts and conduct would be to have an effect on the commission of the crime. The specific question raised by the Defence here, then, is whether, in accordance with Article 6(1) of the Statute and customary international law, an accused can be held criminally liable if he volitionally (or willingly) performs the *actus reus* of aiding and abetting liability (providing assistance, encouragement or moral support) *knowing* (or being aware of the substantial likelihood) that his acts or conduct will have an effect on the commission of the crimes.[1289]

416. The Appeals Chamber will now address the Defence's contention that volitionally or willingly performing the *actus reus* of aiding and abetting liability with "knowledge" of the consequence of one's acts or conduct is not a culpable mental state for aiding and abetting liability under customary international law.

(i) "Knowledge"

a. Post-Second World War Jurisprudence

417. Like other international criminal tribunals[1290] as well as domestic courts[1291] ascertaining international law, this Appeals Chamber looks to the caselaw of post-Second World War tribunals as indicative of customary international law.

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418. Article 6 of the Charter of the International Military Tribunal (IMT) established individual criminal liability for "[l]eaders, organizers, instigators, and accomplices participating in the formulation or execution of a Common Plan or Conspiracy to commit [the crimes]."[1292] The IMT found:

> Hitler could not make aggressive war by himself. He had to have the co-operation of statesmen, military leaders, diplomats, and business men. When they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing.[1293]

The IMT held accused personally liable for their knowing participation in the crimes. Von Schirach was found guilty in that "while he did not originate the policy of deporting Jews from Vienna, [he] participated in this deportation after he had become Gauleiter of Vienna. He knew that the best the Jews could hope for was a miserable existence in the ghettos of the East. Bulletins describing the Jewish extermination were in his office."[1294] Seyss-Inquart was held responsible for being "a knowing and voluntary participant in War Crimes and Crimes against Humanity which were committed in the occupation of the Netherlands."[1295] In relation to Speer, the IMT found that "[t]he system of blocked industries played only a small part in the over-all slave labour program, *although Speer urged its cooperation with the slave labour program, knowing the way in which it was actually being administered*. In an official sense, he was its principal beneficiary and he constantly urged its extension."[1296] Other convictions relied on similar findings.[1297]

419. Control Council Law No. 10,[1298] the legal basis for further prosecution of crimes against peace, crimes against humanity and war crimes, established individual criminal liability in Article II(2).[1299] Applying that law,[1300] the Nuremberg Military Tribunals[1301] (NMTs) consistently held that an accused's knowledge that he was participating in the commission of the crime—that is, an accused's knowledge of the consequence of his acts or conduct—established the *mens rea* for personal liability. The NMTs did not require that an accused directly intended that the consequence of his acts or conduct were to contribute to the commission of the crimes.[1302]

420. Tribunal III held in the *Justice* Case:

> the essential elements to prove a defendant guilty under the indictment in this case are that a defendant had knowledge of an offense charged in the indictment and established by the evidence, and that he was connected with the commission of that offense.[1303]

Applying this holding, the Tribunal entered convictions where it was satisfied that an accused had knowledge of the crime and of his participation in its commission.[1304] It found Rothaug guilty because he "was the knowing and willing instrument in that program of persecution and extermination."[1305] Klemm was convicted because, among other facts, he "knew of abuses in concentration camps. He knew of the practice of severe interrogations. He knew of the persecution and oppression of the Jews and Poles and gypsies. He must be assumed to have known, from the evidence, the general basis of Nacht und Nebel procedure under the Department of Justice."[1306] The Tribunal convicted Joel because he was "chargeable with knowledge that the Night and Fog program from its inception to its final conclusion constituted a violation of the laws and customs of war."[1307] The United Nations War Crimes Commission (UNWCC) Commentary to the *Justice* Case noted:

> The question of knowledge was treated by the Tribunal as one of the highest importance, and repeated reference was made in the Judgment to the fact that various accused had knowledge, or must be assumed to have had knowledge, of the use made of the German legal system by Hitler and his associates, of the Nacht und Nebel plan and of the schemes for racial persecution.[1308]

421. Tribunal IV convicted Flick, a businessman who became a member of Himmler's Circle of Friends and contributed money to Himmler, for being an accessory to crimes against humanity and war crimes perpetrated by the SS.[1309] In assessing his *mens rea*, the Tribunal considered decisive the fact that Flick supported Himmler at a time when the criminal activities of the SS were common knowledge.[1310] The Tribunal held:

> One who knowingly by his influence and money contributes to the support thereof must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes.[1311]

422. Tribunal VI held in the *Farben* Case:

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> no individual defendant may be held guilty of the war crimes, or any aspect thereof, charged under count two, unless the competent proof establishes beyond reasonable doubt that he *knowingly participated* in an act of plunder or spoliation . . . .[1312]

The defendants in that case were charged with war crimes and crimes against humanity through participation in the plunder of public and private property in countries and territories which came under the belligerent occupation of Germany.[1313] The Tribunal held that "[r]esponsibility does not automatically attach to an act proved to be criminal merely by virtue of a defendant's membership in the Vorstand. . . . [T]he evidence must establish action of the character we have indicated, with knowledge of the essential elements of the crime."[1314] In respect of Schmitz, chairman of the Vorstand and the chief financial officer of Farben, the Tribunal found:

> The information coming to his attention in this manner was sufficient to apprise him of the pressure tactics being employed to force the French to consent to Farben's majority participation in the French dyestuffs industry. He was in a position to influence policy and effectively to alter the course of events. *We, therefore, find that Schmitz bore a responsibility for, and knew of, Farben's program to take part in the spoliation of the French dyestuffs industry and, with this knowledge, expressly and impliedly authorized and approved it*. Schmitz must be held Guilty on this aspect of count two of the indictment.[1315]

423. The *Ministries* Case, involving senior government and business officials, is particularly instructive. Tribunal IV found the requisite *mens rea* where an accused had knowledge that his acts had an effect on the crimes and thus he knowingly participated in the commission of crimes. Under Count Five, charging crimes against humanity, the Tribunal found that Keppler "knew the [agency's] functions and he knew what part it played in the general scheme of resettlement. If the [agency] had an important part in a crime cognizable by this Tribunal, he bears a part in the criminal responsibility thereto."[1316] Likewise, Kehrl was found guilty because "he was thoroughly aware of what the [agency] was expected to do, what its policies were, and what it in fact did."[1317] While Puhl, a *Reichsbank* senior official, "had no part in the actual extermination of Jews and other concentration camp inmates,"[1318] he was found guilty because he "knew that what was to be received and disposed of was stolen property and loot taken from the inmates of concentration camps,"[1319] although "[i]t is to be said in his favor that he neither originated the matter and that it was probably repugnant to him."[1320] Stuckart[1321] and Schellenberg,[1322] among others, were likewise convicted of crimes against humanity because they had knowledge of the criminal consequence of their acts. Similarly, Koerner[1323] and Pleiger[1324] were found guilty of the crime of slave labour charged in Count Seven because they had knowledge of their participation in the crime. Rasche was convicted on Count Six for participating in the spoliation and plunder in Czechoslovakia, and in relation to his *mens rea* the Tribunal found:

> The fact remains that it is credible evidence of the extent of the Dresdner Bank participation in the Aryanization program during the period mentioned. . . . There can be little question but that defendant, as active head of the Vorstand of the BEB, was conversant with such an extensive activity of such bank.[1325]

424. The Tribunal in the *Ministries* Case was further clear that it did not require as a matter of law that an accused must have willed or desired the consequence of his acts or conduct, and that an accused's knowledge of the criminal consequence was sufficient to establish the *mens rea* for personal culpability. Von Weizsaecker and Woermann, senior officials in the Foreign Ministry, were convicted for crimes against humanity under Count Five. The Tribunal found that even though they neither willed nor desired the commission of the crimes, their knowledge that they were participating in the crimes was sufficient to establish the requisite *mens rea:*

> The mass deportation of Jews to the East which resulted in the extermination of many millions of them found its expression in the celebrated Wannsee conference of 20 January 1942. The Foreign Office played an important part in these negotiations and in the actions thereafter taken to implement and assist the program. *Von Weizsaecker or Woermann neither originated it, gave it enthusiastic support, nor in their hearts approved of it. The question is whether they knew of the program and whether in any substantial manner they aided, abetted, or implemented it*.[1326]

It is valuable to further quote at length the Tribunal's findings regarding Schwerin von Krosigk's guilt for crimes against humanity under Count Five:

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> The evidence clearly shows that he was not a member of Hitler's inner circle, that he was not one of his confidants, and that he came in touch with him but seldom before the war, and even less often afterward. During the course of the years he suffered many conflicts of conscience and was fully aware that measures to which he put his name and programs in which he played a part were contrary and abhorrent to what he believed and knew to be right. It is difficult to understand what motives or what weaknesses impelled or permitted him to remain and play a part, in many respects an important one, in the Hitler regime. It is one of the human tragedies which are so often found in life.[1327] . . .
>
> *It is clear, however, that notwithstanding the conflicts of conscience which he suffered, and of them we have no doubt, he actively and consciously participated in the crimes charged in count five*. Neither the desire to be of service nor the desire to help individuals nor the demands of patriotism constitute a justification or an excuse for that which the evidence clearly establishes he did, although they may be considered in mitigation of punishment. We find the defendant Schwerin von Krosigk guilty under count five in the particulars set forth.[1328]

425. In the *Pohl* Case, Tribunal II found the requisite *mens rea* where an accused had knowledge of his participation in the commission of the crimes.[1329] In assessing the responsibility of Max Kiefer, an architect in charge of planning and constructing concentration camps,[1330] the Tribunal concluded that "the very nature of such installations and their continued maintenance constituted knowledge of the purposes for which they were to be used."[1331] Tribunal II in the *Einsatzgruppen* Case found that an accused's knowledge of the crimes and his participation therein established the *mens rea* for culpability. The Tribunal held that Klingelhoefer's role as an interpreter did "not exonerate him from guilt because *in locating, evaluating and turning over lists of Communist party functionaries to the executive department of his organization he was aware that the people listed would be executed when found*. In this function, therefore, he served as an accessory to the crime."[1332]

426. Like the NMTs, British tribunals found that knowledge of the crimes and the accused's participation therein established personal responsibility. The three accused in *Zyklon B* were charged with knowingly supplying poison gas used for the extermination of allied nationals interned in concentration camps.[1333] The Judge Advocate emphasised the Prosecution's contention that the accused must have known that the large deliveries of Zyklon B could not have been made for the purpose of disinfecting buildings.[1334] In the *Rhode* Case, the Judge Advocate explained that:

> if he was taking part with the other man with the knowledge that that other man was going to put the killing into effect then he was just as guilty as the person who fired the shot or delivered the blow.[1335]

427. In *Roechling*, the French Superior Military Government Court, applying C.C. Law No. 10, convicted Ernest Roechling for war crimes of spoliation because "[h]e was fully aware of the significance of his own role" in the commission of the crimes.[1336] In the *Holstein* case[1337] and *Wagner* case[1338] before French military tribunals applying French military and domestic law, the accused were found guilty as accomplices under Article 60 of the French Criminal Code:

> any person who has supplied the arms, tools or any other means that have been used in the commission of the crime or offence, knowing that they would be so used; or who has *wittingly aided or assisted the author or authors of the crime or offence in any acts preparatory to, or facilitating its perpetration, or in its execution . . . .*[1339]

United States military tribunals in the Far East also found *mens rea* established by an accused's knowledge of his participation in the crime.[1340]

b. The 1996 ILC Draft Code

428. The Appeals Chamber accepts that the International Law Commission's[1341] 1996 Draft Code of Crimes against the Peace and Security of Mankind is generally regarded as an authoritative international legal instrument that, although non-binding, may "(i) constitute evidence of customary law, or (ii) shed light on customary rules which are of uncertain contents or are in the process of formation, or, at the very least, (iii) be indicative of the

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legal views of eminently qualified publicists representing the major legal systems of the world."[1342] Article 2(3)(d) of the 1996 Draft Code provides:

> 3. An individual shall be responsible for a crime set out in article 17, 18, 19 or 20 if that individual:
>
> (d) knowingly aids, abets or otherwise assists, directly and substantially,[1343] in the commission of such a crime, including providing the means for its commission.

The Commentary states that "[t]he accomplice must *knowingly* provide assistance to the perpetrator of the crime. Thus, an individual who provides some type of assistance to another individual *without knowing* that this assistance will facilitate the commission of a crime would not be held accountable under subparagraph (d)."[1344]

c. Domestic jurisdictions

429. Domestic law, even if consistent and continuous in all States, is not necessarily indicative of customary international law. This is particularly true in defining legal elements and determining forms of criminal participation in domestic jurisdictions, which may base their concepts of criminality on differing values and principles. Therefore, the reliance by the Defence on examples of domestic jurisdictions requiring or applying a "purpose" standard to an accused's mental state regarding the consequence of his acts or conduct[1345] is misplaced.

430. Nor is such practice consistent among all States. The Appeals Chamber equally identifies a number of States that explicitly provide that an accused's knowledge of the consequence of his acts or conduct is culpable *mens rea* for aiding and abetting liability. In South Africa "[a]n accomplice is someone who knowingly associates himself or herself with the commission of the crime by the perpetrator and furthers the commission of the crime."[1346] Article 121–7 of the French Penal Code establishes individual criminal liability for "the person who knowingly, by aiding and abetting, facilitates its preparation or commission."[1347] Under the United States Military Regulations, the elements of aiding and abetting are defined as:

> (A) The accused committed an act that aided or abetted another person or entity in the commission of a substantive offense triable by military commission;
>
> (B) Such other person or entity committed or attempted to commit the substantive offense; and
>
> (C) The accused *intended to* or *knew* that the act would aid or abet such other person or entity in the commission of the substantive offense or an associated criminal purpose or enterprise.[1348]

d. The Jurisprudence of International Criminal Tribunals

431. In its review of the relevant jurisprudence, the Appeals Chamber has found the reasoning and holdings of the following ICTY Trial Chambers persuasive and consistent with its conclusions. While the Defence challenges the analysis performed by the ICTY Trial Chamber in *Furundžija*, these Trial Chambers independently assessed customary international law as established in the post-Second World War jurisprudence and their holdings are unchallenged by the Defence.

432. Having reviewed post-Second World War cases,[1349] the *Tadić* Trial Chamber concluded that the Nuremberg war crimes trials showed a clear pattern in requiring what it termed "intent", by which, in this Chamber's view, it meant knowledge, not direct intent, as its description makes clear: "there is a requirement of intent, which involves *awareness* of the act of participation coupled with a conscious decision to participate by planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of a crime."[1350] The *Tadić* Trial Chamber thus established that "aiding and abetting includes all acts of assistance by words or acts that lend encouragement or support, as long as the requisite intent is present,"[1351] and concluded that

> the accused will be found criminally culpable for any conduct where it is determined that he *knowingly* participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.[1352]

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433. The *Čelebići* Trial Chamber adopted the *Tadić* formulation as sound,[1353] holding that under Article 7(1) of the ICTY Statute:

> [t]he corresponding intent, or *mens rea*, is indicated by the requirement that the act of participation be performed with knowledge that it will assist the principal in the commission of the criminal act. Thus, there must be "awareness of the act of participation coupled with a conscious decision to participate by planning, instigating, ordering, committing, or otherwise aiding and abetting in the commission of a crime."[1354]

434. The Trial Chamber in *Aleksovski* also approvingly relied on the *Tadić* Trial Chamber's articulation when analyzing individual criminal responsibility under Article 7(1) of the ICTY Statute for "having contributed to the perpetration of the crime without, however, having . . . committed the unlawful act."[1355] As to the accused's mental state regarding the consequence of his acts or conduct, the Trial Chamber held:

> The accused must also have participated in the illegal act *in full knowledge of what he was doing*. This intent was defined by Trial Chamber II as "awareness of the act of participation coupled with a conscious decision to participate".[1356]

e. Article 25(3) of the Rome Statute[1357]

435. The Appeals Chamber holds that Article 6(1) of the Special Court Statute has no direct equivalent in the Rome Statute.[1358] The Appeals Chamber is also of the view that Article 25(3) does not represent or purport to represent a complete statement of personal culpability under customary international law.[1359] Accordingly, the Appeals Chamber finds that the Rome Statute has no bearing on the *mens rea* elements of aiding and abetting liability under customary international law applicable during the Indictment Period.[1360]

f. Conclusion

436. The Appeals Chamber's review of the post-Second World War jurisprudence demonstrates that under customary international law, an accused's knowledge of the consequence of his acts or conduct—that is, an accused's "knowing participation" in the crimes—is a culpable *mens rea* standard for individual criminal liability. Similarly, the post-Second World War jurisprudence was found in early ICTY Judgments other than *Furundžija*[1361] to establish that under customary international law, "awareness of the act of participation coupled with a conscious decision to participate" in the commission of a crime entails individual criminal responsibility.[1362] The 1996 ILC Draft Code supports this conclusion, and Article 25(3)(c) of the Rome Statute is not evidence of state practice to the contrary. Whether this standard is termed "knowledge", "general intent", "*dol special*", "*dolo diretto*" or "*dolus directus* in the second degree", the concept is the same.

437. In light of the foregoing, the Appeals Chamber reaffirms that knowledge is a culpable *mens rea* standard for aiding and abetting liability under Article 6(1) of the Statute and customary international law.

(ii) "Awareness of the Substantial Likelihood"

438. This Appeals Chamber and the Special Court Trial Chambers have consistently held that "awareness of the substantial likelihood"[1363] is a culpable mental state for aiding and abetting under customary international law.[1364] The Defence has not provided cogent reasons to depart from this jurisprudence, which is consistent with the principle that awareness and acceptance of the substantially likely consequence of one's acts and conduct constitutes culpability.[1365] In finding Taylor criminally responsible for aiding and abetting, the Trial Chamber found beyond a reasonable doubt that Taylor *knew* that his acts assisted the commission of the crimes.[1366] Accordingly, the Appeals Chamber concludes that the Defence has not shown an error that would occasion a miscarriage of justice and finds it unnecessary to further consider the Defence submissions.

(iii) Knowledge of a "Substantial" Effect

439. The Defence argues that the Trial Chamber erred in not requiring proof that Taylor knew that the effect his acts would have on the commission of the crimes would be "substantial".[1367] The consistent jurisprudence of this Court does not require such proof. Whether an accused's acts and conduct have a "substantial" effect on the

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commission of the crime is an ultimate issue to be decided by the trier of fact in light of the law and the facts established. It is not a requisite element of the accused's *mens rea* because as a general principle of criminal law, it is the task of judges, not an accused, to determine the correct legal characterisation of an accused's conduct (*iura novit curia*).[1368] In light of these considerations, the Defence submission is dismissed.

(c) Conclusion

440. The Appeals Chamber finds no error in the Trial Chamber's articulation of the law.

2. Alleged Violation of the Principle of Personal Culpability

(a) The Trial Chamber's Findings

441. The Trial Chamber found that Taylor "knew of the AFRC/RUF's operational strategy and intent to commit crimes."[1369] The Trial Chamber further found that Taylor "was also aware of the 'essential elements' of the crimes committed by RUF and RUF/AFRC troops, including the state of mind of the perpetrators."[1370]

(b) Submissions of the Parties

442. In Grounds 16, 19 and 21, the Defence posits that crimes are committed in any armed conflict. It asserts that the *mens rea* standard applied by the Trial Chamber is satisfied where the accused is aware of a mere "probability" that some crime may be committed.[1371] On that basis, it submits that the law as articulated by the Trial Chamber is always satisfied in the context of armed conflict, as at least some crime will always be committed during an armed conflict, and thus criminalises assistance to any party to an armed conflict.[1372] It contends accordingly that the law applied by the Trial Chamber is not consistent with fundamental principles of individual criminal responsibility.[1373]

443. The Prosecution responds that the Trial Chamber properly assessed Taylor's *mens rea* in accordance with the established jurisprudence.[1374] It further argues that the Trial Chamber found that the RUF/AFRC's Operational Strategy was to terrorise civilians, "of which Taylor himself was well aware when he gave the group guns and ammunition that fuelled its terror campaign."[1375]

444. In reply, the Defence contends that the Trial Chamber improperly applied a probability standard to Taylor's awareness that his acts and conduct assisted the commission of the crimes.[1376]

(c) Discussion

445. There is, of course, always a possibility that serious violations of international humanitarian law will occur in an armed conflict. Mere awareness of this possibility does not, however, suffice for the imposition of criminal responsibility.[1377] The crux of the Defence submission is that in an armed conflict, the commission of crimes is not simply a probability, but a virtual certainty.[1378] Whether, in the abstract, the commission of crimes in armed conflicts is possible, probable or certain is not relevant to and does not establish individual criminal liability under the law. The Defence submission fails to address the *mens rea* requirements as established in the law. The law requires that an accused must be aware, *inter alia*, of the consequence of his conduct, the essential elements of the crime, the concrete factual circumstances and the criminal intent, and it requires concrete knowledge or awareness on the part of the accused, not just an abstract awareness that crimes will be committed in the course of any armed conflict.[1379] The specifics of this awareness will depend on the factual circumstances of each particular case. The Trial Chamber did not rely on abstract awareness, either in its articulation or its application of the law. It applied the law in keeping with the specific facts that it found.[1380] As its reasoning and conclusions demonstrate, the Trial Chamber found that Taylor knew of the RUF/AFRC's Operational Strategy, knew of its intent to commit crimes and was aware of the essential elements of the crimes in light of specific and concrete information of which Taylor was aware.[1381] The Defence fails to show any error. The Appeals Chamber concludes that the *mens rea* standard articulated by the Trial Chamber is in accordance with principles of personal culpability.

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3. "Purpose"

446. For the reasons previously stated, the Appeals Chamber concludes that, contrary to the Defence submission, the *mens rea* standard for aiding and abetting liability under customary international law is not limited to "direct intent" or "purpose".[1382] Having considered the issue in detail in the course of assessing the Defence submissions, the Appeals Chamber makes the following observations.

447. The Defence submits that it is well-known that the "purpose" standard as used in Article 25(3)(c) of the Rome Statute is taken from the United States Model Penal Code.[1383] Even if this were to be accepted, the dangers of transplanting municipal law from its complete domestic framework are apparent in this situation. The Model Penal Code reflects a particular construction of the *actus reus* and *mens rea* elements for aiding and abetting liability. Under the Model Penal Code, the *actus reus* for personal culpability is established through *any* act of facilitating the crime; there is no requirement that the act must "substantially" assist the crime, as under customary international law.[1384] The drafters of the Model Penal Code specifically considered but ultimately did not adopt such a requirement, favouring the use of the "purpose" standard alone to distinguish culpable and innocent conduct.[1385] Finally, many jurisdictions utilizing the Model Penal Code have created "criminal facilitation" offenses to address the gap created by the Model Penal Code's limitation of aiding and abetting liability to those who act with "purpose".[1386] In light of these considerations, and particularly as customary international law requires that an accused's acts and conduct of assistance, encouragement or moral support have a substantial effect on the commission of the crime, the liability schemes under the United States Model Penal Code and customary international law are fundamentally distinct.

448. This conclusion is strengthened by the overlap between customary international law and the decisions of Courts applying a "purpose" standard. The Defence highlights the decisions in *R. v. Lam Kit*, *R. v. Leung Tak-yin* and *R. v. Clarkson*, arguing that these suggest State practice in support of the "purpose" standard articulated in Article 25(3)(c) of the Rome Statute.[1387] These decisions concern the culpability of bystanders to the crime, and all apply a "purpose" standard in order to distinguish between culpable and innocent bystanders. Customary international law draws the same distinction between innocent and culpable presence at the scene of the crime, but by directing the attention of the trier of fact to the substantiality of the contribution and the accused's awareness of the circumstances and consequence of his "approving" presence.[1388]

449. Further, while the Defence submits that the "purpose" standard is distinct from the "knowledge" standard in this Court's jurisprudence, it cites the Canadian Criminal Code in support,[1389] which in fact does not support that proposition. Under Section 21(1)(b) of the Canadian Criminal Code, a party to the offence includes any person who "does or omits to do anything for the purpose of aiding any person to commit" the offence. The Canadian Supreme Court in *R. v. Briscoe* held:

> The *mens rea* requirement reflected in the word "purpose" under s. 21(1)(b) has two components: intent and knowledge. For the intent component, it was settled in R. v. Hibbert, [1995] 2 S.C.R. 973, that "purpose" in s. 21(1)(b) should be understood as essentially synonymous with "intention". The Crown must prove that the accused intended to assist the principal in the commission of the offence. The Court emphasized that "purpose" should not be interpreted as incorporating the notion of "desire" into the fault requirement for party liability. It is therefore not required that the accused desired that the offence be successfully committed (Hibbert, at para. 35). The Court held, at para. 32, that the perverse consequences . . . would flow from a "purpose equals desire" interpretation of s. 21(1)(b) . . . .[1390]

This definition of "purpose", provided by the Supreme Court of Canada interpreting its Criminal Code, comports with the knowledge standard as defined in this Court's jurisprudence and discussed above.

450. The Appeals Chamber notes that much of the Defence's discussion in this case about Article 25(3)(c) has proceeded on unsupported assumptions. The Defence case was that aiding and abetting liability as established in this Court's and the *ad hoc* Tribunals' jurisprudence is not in accordance with customary international law and the principle of personal culpability. On that basis it argued that the Appeals Chamber should reject the established caselaw and find that the *mens rea* standard for aiding and abetting liability is direct intent. However, the Appeals Chamber has found that these submissions are without foundation.

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451. The final responsibility to interpret the Rome Statute rests with the ICC Appeals Chamber. As noted, in this Appeals Chamber's view, the individual criminal liability scheme under Article 25(3) of the Rome Statute differs in significant measure from Article 6(1) of the Special Court Statute. Interpreting its own constitutive documents and considering the plain language in context, and in light of the object and purpose of the Rome Statute, the ICC Appeals Chamber may conclude that "purpose" as used in Article 25(3)(c) has the same meaning as "purpose" under Section 21(1)(b) of the Canadian Criminal Code, ensuring that Article 25(3)(c) liability is aligned with Article 30 of the Rome Statute. It may conclude that "perverse consequences" would follow from importing the United States Model Penal Code's definition of "purpose" into the liability scheme in the Rome Statute, such as requiring a higher *mens rea* standard for Article 25(3)(c) than for Article 25(3)(a), (b) and (d). It may adopt the position put forward by the Defence here. Until it has made its views known, speculative exercises do not assist in the identification of the law, and established customary international law, as consistently articulated and applied in the jurisprudence of international criminal tribunals from the Second World War to today, must bear more weight than suppositions as to what Article 25(3)(c) does or does not mean.

D. Alleged Contrary State Practice

(a) Submissions of the Parties

452. In Grounds 16 and 21, the Defence submits that the Trial Chamber's articulation of the law is inconsistent with and contradicted by state practice, as it criminalises behaviour that States do not consider criminal.[1391]

453. The Defence identifies certain activities by States that it asserts the States concerned consider lawful and within their sovereign rights, and claims that the law as articulated by the Trial Chamber would criminalise these activities.[1392] It asserts that States have the right to supply materiel to parties to an armed conflict even if there is evidence that those parties are engaged in the regular commission of crimes.[1393] It further argues that the law articulated by the Trial Chamber would in practice overturn the limits of State responsibility as established by the International Court of Justice.[1394]

454. The Prosecution responds that the Trial Chamber properly applied the law, consistent with customary international law and fundamental principles of criminal law.[1395] It contends that the Defence submissions are based on a misconceived premise that States assert a prerogative to aid and abet armed groups knowing that the group uses an operational strategy of terror against the civilian population, to aid and abet atrocities and to assist the commission of crimes against humanity and war crimes.[1396] It further submits that it cannot be the law that the behaviour of an individual cannot be criminalised because a State could engage in the same behaviour.[1397] Finally, it argues that the Defence submissions are arguments for impunity.[1398]

455. In reply, the Defence contends that the examples it has identified are State practice that would be criminalised under the law articulated by the Trial Chamber.[1399]

(b) Discussion

456. The "examples" offered by the Defence remain at the level of mere assertion, and the "law" on which the Defence relies does not bear any resemblance to the law as actually articulated and applied by the Trial Chamber. It is not within the jurisdiction of this Court to determine the obligations of States and characterise State action as "criminal". This Chamber leaves those bodies and tribunals which properly have authority over States to interpret the law on state responsibility.[1400]

457. States have consistently and repeatedly undertaken obligations to prevent and punish individuals for serious violations of international humanitarian law through treaties that have ripened into customary law establishing individual criminal liability for such violations. Customary international law is clear as to the *actus reus* and *mens rea* elements of aiding and abetting liability for such crimes. Although existing customary international law can be modified if the combination of *opinio juris* and state practice show a continuing and consistent adherence to the new custom by the international community, the Defence has failed to identify any examples of such *opinio juris* and state practice, much less a continuing and consistent adherence.

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458. The examples offered concern activities by persons in official positions that are alleged to violate international criminal law. Article 6(2) of the Statute makes it clear that the official position of an accused or the fact that an accused acted pursuant to orders of a Government shall not relieve him of criminal responsibility. The doctrine of "act of State" is no defence under international criminal law, and individuals are bound to abide by the law regardless of possible authorisation by a State. As the IMT long ago held, "individuals have international duties which transcend the national obligations of obedience imposed by the individual State."[1401]

459. Further, the examples offered do not indicate the attitudes of States. They are not evidence of a State's claim that it has the right to engage in conduct found to be criminal by an impartial tribunal applying customary international law. No statement by a State that it has the right to assist the commission of widespread and systematic crimes against a civilian population has ever been offered.

460. Finally, the submission is that the examples represent state practice, yet only a few are offered. As the ICTY Appeals Chamber held, "[n]o matter how powerful or influential a country is, its practice does not automatically become customary international law."[1402] This is even more true where fundamental principles such as the prohibitions on participation in the commission of serious violations of international law and attacks on civilians are at stake.

461. The Appeals Chamber accepts the Prosecution's submission that some States have expressly indicated in their domestic legislation that they do not consider it lawful to assist those engaged in serious violations of international humanitarian law.[1403] The "Leahy Law" in the United States prohibits funding to governments and foreign military units if they are "engaged in a consistent pattern of gross violations of internationally recognised human rights" or have "committed a gross violation of human rights, unless all necessary corrective steps have been taken."[1404] The European Union Common Position on Exports of Military Technology and Equipment provides that Member States shall "deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law."[1405] These are concrete indications of States' attitudes contrary to the Defence's assertions.

462. Similarly, the Appeals Chamber also notes the recent adoption by the United Nations General Assembly of the Arms Trade Treaty.[1406] This treaty has not yet entered into force nor been widely ratified, but its adoption and provisions do not support the claimed *opinio juris* and state practice modifying existing customary law. Article 6(3) provides:

> A State Party shall not authorize any transfer of conventional arms covered under Article 2(1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Contrary to the Defence claim that there is significant State practice that is contrary to existing customary international law, the Appeals Chamber notes that there are indications of developing attitudes among some States that the international community has an obligation to ensure that civilian populations are protected from genocide, war crimes, ethnic cleansing and crimes against humanity.[1407]

463. In the Appeals Chamber's view, international tribunals, in prosecuting those responsible for serious violations of international humanitarian law, act as the instruments of States. States have created international tribunals to prosecute war crimes, crimes against humanity and genocide. This Court is a demonstrable example, created by the Government of Sierra Leone and the United Nations to prosecute serious violations of international humanitarian law in the territory of Sierra Leone. Similarly, the ICTY and ICTR were created by the United Nations Security Council to prosecute such violations in the territories of the former Yugoslavia and Rwanda, respectively. In discharging their mandates, international tribunals carry out the will of the community of States and indeed humanity as a whole.

464. States have further mandated international criminal tribunals to perform their mandates impartially and apply customary international law as it stands. States, acting as "legislator", provide international courts with Statutes, and mandate judges, as impartial adjudicators, to apply those Statutes and customary international law to the

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cases before them. Performing this role, the Appeals Chamber has duly identified customary international law as it is mandated to do. The issue having been raised that contrary state practice exists, the Appeals Chamber has considered the submissions and found no evidence of state practice indicating a change in customary international law from the existing parameters of personal culpability for aiding and abetting the commission of serious violations of international humanitarian law. The Appeals Chamber is accordingly obliged to apply existing customary international law. As Judge Shahabuddeen aptly noted, "[t]he danger of legislating arises not only where a court essays to make law where there is none, but also where it fails to apply such law as exists; the failure may well be regarded as amounting to judicial legislation directed to repealing the existing law."[1408]

465. As the Special Court Agreement is a treaty to which the Statute is annexed and incorporated, the Parties are at any time free to amend Article 6 of the Statute to expressly define aiding and abetting liability in a different way than under customary international law or to redefine individual criminal liability on account of policy considerations. The United Nations and the Government of Sierra Leone have not done so. This Chamber declines to usurp that role.

E. Specific Direction

1. The Trial Chamber's Finding

466. The Trial Chamber, in articulating the *actus reus* elements of aiding and abetting liability, held that "[t]he *actus reus* of aiding and abetting does not require 'specific direction.'"[1409]

2. Submissions of the Parties

467. In Ground 16, in support of its contention that the Trial Chamber erred in articulating a "knowledge" standard for the *mens rea* of aiding and abetting liability, the Defence submits that the "purpose" standard, which it proposes as the *mens rea* standard for aiding and abetting liability, is analogous to the concept of "specific direction", as recognised in the ICTY and ICTR jurisprudence for the *actus reus* of aiding and abetting liability.[1410] It contends that the "similarity of 'specifically directed' or 'specifically aimed' and 'purpose' is evident," and that "[r]egardless of whether the concept is formally categorized as part of *actus reus* rather than *mens rea*, there is no gainsaying its resemblance to 'for the purpose of facilitating.'"[1411] It accordingly argues that the "knowledge" standard is inconsistent with the concept of "specific direction".

468. The Defence notes that "there's never really been a clear discussion or explanation by any Trial Chamber or Appeals Chamber at the ICTY or ICTR clearly explaining what they consider ["specific direction"] to mean."[1412] It submits, however, that the concept may be understood in two alternative ways, one of which involves the accused's mental state and intention, and the other of which does not. First, it submits, "specific direction" could be understood as limiting an accused's acts and conduct that can constitute "practical assistance, encouragement, or moral support" to the crime; if the accused's acts and conduct were not "specifically directed" to the commission of the crime, they would not, as a matter of law, constitute "practical assistance, encouragement or moral support". It proposes that this assessment would involve considering the mental state and intention of the accused.[1413] Second, it submits, if "specific direction" is narrowly interpreted such that it does not involve the accused's intent and mental state, "specific direction" would be a "weak" concept, and the *actus reus* of aiding and abetting liability would be established when the accused's acts and conduct have a substantial effect on the commission of the crimes, regardless of "specific direction".[1414]

469. The Prosecution responds that the consistent jurisprudence of the ICTY and ICTR establishes that knowledge is a culpable *mens rea* standard for aiding and abetting liability.[1415] It further argues that the ICTY Appeals Chamber held in *Blagojević and Jokić* and *Mrkšić and Sljivančanin* that "specific direction" is not a separate element of the *actus reus* of aiding and abetting liability.[1416] It contends that "specific direction", as used in the *Tadić* Appeal Judgment, clarifies that the *actus reus* of aiding and abetting liability is more strict than the *actus reus* of joint criminal enterprise, since for aiding and abetting liability, "it is not enough that you contribute to the enterprise. [The accused's acts and conduct] have to contribute to the crime."[1417] It submits that this was the understanding expressed by the ICTY Appeals Chamber held in *Blagojević and Jokić* and *Mrkšić and Sljivančanin*.[1418]

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470. The Defence replies that the questions posed by the ICTY Appeals Chamber in the oral hearing for *Perišić* demonstrate that "specific direction" remains a component of the *actus reus* of aiding and abetting liability, whether as a separate element or a part of the "substantial effect" element.[1419]

3. Discussion

471. The Defence did not argue on appeal that the Trial Chamber erred in concluding that "[t]he *actus reus* of aiding and abetting does not require 'specific direction,'"[1420] although it made a number of submissions regarding the notion in Ground 16 (alleged error in *mens rea* standard).[1421] After the pronouncement of the ICTY Appeals Chamber's Judgment in *Perišić*, which followed completion of the pre-appeal proceedings in this case, the Defence sought leave to amend its Notice of Appeal to add that complaint.[1422] The Prosecution also sought leave to file further submissions on the *Perišić* Appeal Judgment,[1423] but for reasons conveyed to both Parties, those motions were denied.[1424] Nonetheless, as the Appeals Chamber noted in its orders denying the motions, it is aware of and considers current relevant jurisprudence.[1425]

472. In applying the Statute and customary international law, the Appeals Chamber is guided by the decisions of the ICTY and ICTR Appeals Chamber.[1426] The Chamber looks as well to the decisions of the Appeals Chamber of the ECCC and STL and other sources of authority.[1427] The Appeals Chamber, however, is the final arbiter of the law for this Court, and the decisions of other courts are only persuasive, not binding, authority. The Appeals Chamber recognises and respects that the ICTY Appeals Chamber is the final arbiter of the law for that Court.

473. There is nothing in the Statute to indicate that "specific direction" is an element of the *actus reus* of aiding and abetting liability.[1428] In the *Perišić* Appeal Judgment, the ICTY Appeals Chamber held that "specific direction" must be proved beyond a reasonable doubt in order to establish the *actus reus* of aiding and abetting liability.[1429] The issue raised in respect of "specific direction" then is whether it is an element of the *actus reus* of aiding and abetting liability under customary international law prevailing during the Indictment Period in this case.

474. The Appeals Chamber has independently reviewed the post-Second World War jurisprudence, and is satisfied that those cases did not require an *actus reus* element of "specific direction" in addition to proof that the accused's acts and conduct had a substantial effect on the commission of the crimes.[1430] Similarly, the Appeals Chamber has examined the ILC Draft Code of Crimes[1431] and state practice,[1432] and is satisfied that they do not require such an element.

475. For the reasons discussed above, the Appeals Chamber concludes that the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute and customary international law is that an accused's acts and conduct of assistance, encouragement and/or moral support had a substantial effect on the commission of each charged crime for which he is to be held responsible.[1433] This requirement ensures that there is a sufficient causal, a "culpable",[1434] link between the accused and the commission of the crime before an accused's acts and conduct may be adjudged criminal.[1435] The principle articulated by this and other Appeals Chambers is that the *actus reus* of aiding and abetting liability is established by assistance that has a substantial effect on the crimes, not the particular manner in which such assistance is provided.[1436] As the Appeals Chamber, as well as the ICTY and ICTR Appeals Chambers, have consistently emphasised, whether the accused's acts and conduct had a substantial effect on the commission of the crime "is to be assessed on a case-by-case basis in light of the evidence as a whole."[1437]

476. The *Perišić* Appeals Chamber did not assert that "specific direction" is an element under customary international law.[1438] Its analysis was limited to its prior holdings and the holdings of the ICTR Appeals Chamber, which is the same body.[1439] Rather than determining whether "specific direction" is an element under customary international law, the *Perišić* Appeals Chamber specifically and only inquired whether the ICTY Appeals Chamber had previously departed from its prior holding that "specific direction" is an element of the *actus reus* of aiding and abetting liability.[1440] In the absence of any discussion of customary international law, it is presumed that the ICTY Appeals Chamber in *Perišić* was only identifying and applying internally binding precedent.

477. In holding that the ICTY Appeals Chamber had not departed from its prior precedent, the *Perišić* Appeals Chamber stated that "[h]ad the Appeals Chamber [in *Blagojević and Jokić*, *Mrkšić and Sljivančanin* and *Lukić and Lukić*] found cogent reasons to depart from its relevant precedent, and intended to do so, it would have performed

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a clear, detailed analysis of the issue, discussing both past jurisprudence and the authorities supporting an alternative approach."[1441] In examining this reasoning in terms of its persuasive value, however, this Appeals Chamber notes that the ICTY Appeals Chamber's jurisprudence does not contain a clear, detailed analysis of the authorities supporting the conclusion that "specific direction" *is* an element of the *actus reus* of aiding and abetting liability under customary international law.[1442]

478. The ultimate precedent identified by the *Perišić* Appeals Chamber was the *Tadić* Appeal Judgment.[1443] That Judgment did not, however, canvas customary international law regarding the elements for aiding and abetting liability, and its discussion of aiding and abetting was limited to explaining the differences between aiding and abetting liability and joint criminal enterprise liability.[1444] The Appeals Chamber is further not persuaded by the *Perišić* Appeal Chamber's analysis of the ICTY Appeals Chamber's jurisprudence on "specific direction".[1445] The *Mrkšić and Sljivančanin* Appeals Chamber held that "the Appeals Chamber has confirmed that 'specific direction' is not an essential ingredient of the *actus reus* of aiding and abetting."[1446] The *Lukić and Lukić* Appeals Chamber then held that there were no cogent reasons to deviate from the holding of the *Mrkšić and Sljivančanin* Appeal Judgement that specific direction is not essential to the *actus reus* of aiding and abetting liability.[1447]

479. The Appeals Chamber is further not persuaded by the *Perišić* Appeals Chamber's holding that "no conviction for aiding and abetting may be entered if the element of specific direction is not established beyond reasonable doubt, either explicitly or implicitly."[1448] That a finding necessary to a conviction and one that must be proved beyond a reasonable doubt can be "implicit"[1449] or "self-evident",[1450] would appear to be inconsistent with the standard of proof beyond a reasonable doubt[1451] and the presumption of innocence.[1452]

480. Although the *Perišić* Appeal Judgment introduces novel elements in its articulation of "specific direction", which may perhaps be developed in time, this Appeals Chamber is not persuaded that there is good reason to depart from settled principles of law at this time.[1453] As the Appeals Chamber has concluded, the requirement that the accused's acts and conduct have a substantial effect on the commission of the crime ensures that there is a sufficient causal link between the accused and the commission of the crime.[1454] The Appeals Chamber has further concluded that this requirement is sufficient to ensure that the innocent are not unjustly held liable for the acts of others.[1455] Accordingly, the Appeals Chamber does not agree with the *Perišić* Appeals Chamber's treatment of the accused's physical proximity to the crime as a decisive consideration distinguishing between culpable and innocent conduct.[1456] This Appeals Chamber has previously held, consistent with the holdings of all other appellate chambers, that "acts of aiding and abetting can be made at a time and place removed from the actual crime."[1457] Whether the accused is geographically close to the scene of the crime may be relevant depending on the facts of the case, particularly where that presence is alleged to have contributed to the commission of the crime,[1458] but it is not a legal requirement. While an accused may be physically distant from the commission of the crime, he may in fact be in proximity to and interact with those ordering and directing the commission of crimes.

4. Conclusion

481. The Appeals Chamber is not persuaded that there are cogent reasons to depart from its holding that the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute and customary international law is that the accused's acts and conduct of assistance, encouragement and/or moral support had a substantial effect on the commission of each charged crime for which he is to be held responsible. Accordingly, the Appeals Chamber concludes that "specific direction" is not an element of the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute or customary international law.

F. Conclusion on the Law of Aiding and Abetting

482. Having considered the Statute and customary international law, the Appeals Chamber finds that the *actus reus* of aiding and abetting liability is established by assistance that has a substantial effect on the crime, not by the particular manner in which such assistance is provided. The Appeals Chamber rejects the Defence submission that the Trial Chamber was required to find that Taylor provided assistance to the specific physical actor who committed the *actus reus* of each underlying crime. The Appeals Chamber accordingly affirms its prior holding that the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute and customary international law is

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that an accused's acts and conduct of assistance, encouragement and/or moral support had a substantial effect on the commission of the crimes charged for which he is to be held responsible.

483. The Appeals Chamber's review of the post-Second World War jurisprudence and subsequent caselaw demonstrates that under customary international law, an accused's knowledge of the consequence of his acts or conduct—that is, an accused's "knowing participation" in the crimes—is a culpable *mens rea* standard for individual criminal liability. In light of the foregoing, the Appeals Chamber reaffirms that knowledge is a culpable *mens rea* standard for aiding and abetting liability under Article 6(1) of the Statute and customary international law.

484. Although existing customary international law can be modified if the combination of *opinio juris* and state practice show a continuing and consistent adherence to the new custom by the international community, the Defence has failed to identify any examples of such *opinio juris* and state practice, much less a continuing and consistent adherence. The issue having been raised that contrary state practice exists, the Appeals Chamber has considered the submissions and found no evidence of state practice indicating a change in customary international law from the existing parameters of personal culpability for aiding and abetting the commission of serious violations of international humanitarian law.

485. The Appeals Chamber further concludes that the law articulated and applied by the Trial Chamber is in accordance with the principle of personal culpability.

486. Finally, the Appeals Chamber concludes that "specific direction" is not an element of the *actus reus* of aiding and abetting liability under Article 6(1) of the Statute or customary international law. Although the *Perišić* Appeal Judgment introduces novel elements in its articulation of "specific direction", which may perhaps be developed in time, this Appeals Chamber is not persuaded that there are cogent reasons to depart from its holding regarding the *actus reus* and *mens rea* of aiding and abetting liability under Article 6(1) of the Statute and customary international law.

G. Planning–*Actus Reus*

1. The Trial Chamber's Findings

487. The Trial Chamber articulated the *actus reus* (objective) and *mens rea* (mental) elements of planning liability as follows:

> i. The accused, alone or with others, intentionally designed an act or omission constituting the crimes charged;
>
> ii. With the intent that a crime or underlying offence be committed in the execution of that design, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed in the execution of that design.

The Trial Chamber further explained:

> While the Prosecution need not prove that the crime or underlying offence with which the accused is charged would not have been perpetrated but for the Accused's plan, the plan must have been a factor "substantially contributing to criminal conduct constituting one or more statutory crimes that are later perpetrated.[1459]

2. Submissions of the Parties

488. In Ground 11, the Defence submits that the Trial Chamber erred as a matter of law by failing to require that Taylor planned the commission of "concrete crimes" in order to be satisfied that the *actus reus* of planning liability was proved.[1460] It contends that the *actus reus* of planning liability is "one or more persons formulate a method of design or action, procedure or arrangement of the accomplishment of *a particular crime*."[1461] It further relies on the ICTY Trial Chamber's articulation of the law on planning liability in *Brđanin*.[1462] It argues that planning liability cannot arise when the accused formulated a plan that does not constitute a plan to commit concrete crimes.[1463]

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489. The Prosecution responds that the accepted international jurisprudence takes a broad approach to the *actus reus* of planning, and that the accused need only design an act or omission and not necessarily a crime or underlying offence *per se*.[1464] It submits that the objective of a plan is irrelevant if it is to be achieved by an act that constitutes a crime or if the accused is aware of the substantial likelihood that a crime will be committed in achieving the plan.[1465]

490. The Defence replies that in both *Kordić and Čerkez* and *Boškoski and Tarčulovski*, the accused were found liable for planning specific crimes.[1466]

3. Discussion

491. The Appeals Chamber, in several cases, has upheld planning convictions for enslavement committed over more than one year and involving a large number of victims,[1467] the use of child soldiers committed in Kailahun, Kenema, Kono and Bombali Districts between 1997 and September 2000,[1468] a system of sexual slavery in Bombali District and the Western Area[1469] and the conscription and use of child soldiers in the Western Area.[1470] In none of those cases was it required that an accused be found to have planned a "particular" or "concrete" crime.

492. The Appeals Chamber has previously indicated that it does not consider as persuasive authority the *Brđanin* Trial Judgment's holding that planning is distinguished from other forms of criminal participation by a requirement of "specificity". In *Brima et al*., the Trial Chamber rejected that holding as an overly "narrow construction of the responsibility for planning," and held that the requirement of a substantial contribution or effect was sufficient to establish the culpable link between the accused and the crimes.[1471] The Trial Chamber's articulation of the law was affirmed on appeal.[1472] Similarly, in *Sesay et al.*, the Appeals Chamber distinguished the *Brđanin* Trial Judgment on the facts, and noted that it was not determinative to Sesay's planning liability.[1473] In addition, the ICTY Appeals Chamber subsequently rejected the *Brđanin* Trial Chamber's holding in *Kordić and Čerkez*.[1474] As the Defence clearly raises the issue now, this Appeals Chamber clarifies that it does not accept the *Brđanin* Trial Judgment's holding.

493. The Appeals Chamber notes that in *Boškoski and Tarčulovski*, the appellant made similar submissions as those presented here.[1475] The ICTY Appeals Chamber rejected them, holding that where the accused planned conduct that had the predominant purpose to indiscriminately attack civilians, the accused planned conduct which constituted crimes.[1476] The ICTY Appeals Chamber further held that "the legitimate character of an operation does not exclude an accused's criminal responsibility for planning, instigating and ordering crimes committed in the course of this operation" if the goal is to be achieved by the commission of crimes.[1477] The Appeals Chamber agrees.

494. The Appeals Chamber agrees with the Trial Chamber's articulation of the law[1478] and holds that the *actus reus* of planning liability is that an accused participated in designing an act or omission[1479] and thereby had a substantial effect on the commission of the crime.[1480] The Appeals Chamber further holds that in order to incur planning liability, an accused need not design the conduct alone,[1481] and the accused need not be the originator of the design or plan.[1482] The Appeals Chamber reaffirms that whether the accused's acts "amount to a substantial contribution to the crime for the purposes of planning liability is to be assessed on a case-by-case basis in light of the evidence as a whole."[1483] The Appeals Chamber further holds that the *mens rea* of planning liability is that the accused intended, knew or was aware of the substantial likelihood that a crime will be committed in the execution of that plan.[1484]

4. Conclusion

495. The Defence submission is rejected.

H. Conclusion

496. Defence Grounds 16, 21 and 34 are dismissed in their entirety. Defence Grounds 11 and 19 are dismissed in present parts.

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VIII. TAYLOR'S CRIMINAL LIABILITY

497. The Trial Chamber convicted Taylor for aiding and abetting the crimes charged in Counts 1–11 of the Indictment, and found proved beyond a reasonable doubt, that were committed between 30 November 1996 and 18 January 2002 in the Districts of Bombali, Kailahun, Kenema, Kono, Port Loko and Freetown and the Western Area.[1485] It also convicted Taylor for planning the commission of crimes charged in Counts 1–11 of the Indictment, and found proved beyond a reasonable doubt, that were committed in the attacks on Kono and Makeni in December 1998 and in the invasion of and retreat from Freetown, between December 1998 and February 1999, in the Districts of Bombali, Kailahun, Kono, Port Loko and Freetown and the Western Area.[1486]

498. The Appeals Chamber has affirmed the Trial Chamber's conclusion that certain crimes were defectively pleaded in the Indictment.[1487] It has affirmed the Trial Chamber's factual and legal findings that the crimes properly charged in Counts 1–11 of the Indictment were committed.[1488] The Appeals Chamber has affirmed the Trial Chamber's factual findings regarding Taylor's acts and conduct during the Indictment Period.[1489] It has also affirmed the Trial Chamber's factual findings regarding the RUF/AFRC's Operational Strategy.[1490] Finally, the Appeals Chamber has concluded that the Trial Chamber properly articulated and applied the *mens rea* and *actus reus* elements of aiding and abetting and planning liability.[1491]

499. The Parties' remaining challenges to Taylor's individual criminal liability for the crimes charged in Counts 1–11 of the Indictment concern the Trial Chamber's application of the law to the facts found, that is, its ultimate conclusions that the *actus reus* and *mens rea* elements of individual criminal liability under Article 6(1) were proved beyond a reasonable doubt and its findings on cumulative convictions. In this section of the Judgment, the Appeals Chamber accordingly considers: (i) the Defence's challenges to the Trial Chamber's conclusion that Taylor is guilty of aiding and abetting the crimes charged in Counts 1–11 of the Indictment; (ii) the Defence's challenges to the Trial Chamber's conclusion that Taylor is guilty of planning the crimes charged for which he was convicted; (iii) the Defence submission that Taylor's convictions for the crimes of rape (Count 4) and sexual slavery (Count 5) are impermissibly cumulative; and (iv) the Prosecution submission that the Trial Chamber erred in failing to convict Taylor of instigating and/or ordering the crimes charged.

A. Aiding and Abetting Liability

500. The remaining Defence submissions in relation to Taylor's conviction for aiding and abetting the crimes charged in Counts 1–11 of the Indictment challenge the Trial Chamber's ultimate conclusions that the *actus reus* and *mens rea* elements of aiding and abetting liability were proved beyond a reasonable doubt. The Defence advances two arguments. First, in Grounds 22–32, it submits that the Trial Chamber erred in concluding that the *actus reus* of aiding and abetting liability was proved beyond a reasonable doubt. Second, in Grounds 17 and 19, it challenges the Trial Chamber's conclusion that Taylor possessed the requisite *mens rea* for aiding and abetting liability.

1. *Actus Reus*

(a) The Trial Chamber's Findings

501. Having set out the applicable law on individual criminal liability,[1492] the evidence and its findings regarding the commission of the crimes charged in Counts 1–11 of the Indictment,[1493] the evidence and its findings regarding the *chapeau* requirements under Articles 2–4 of the Statute,[1494] the evidence and its findings regarding Taylor's acts and conduct during the Indictment Period,[1495] the evidence and its findings regarding the Leadership and Command Structure of the RUF/AFRC,[1496] its findings regarding the RUF/AFRC's Operational Strategy[1497] and the evidence and its findings regarding Taylor's knowledge,[1498] the Trial Chamber applied the law of individual criminal liability to the facts found, in the final section of the Trial Judgment, entitled "Legal Findings on Responsibility".[1499]

502. The Trial Chamber found beyond a reasonable doubt that Taylor's acts and conduct[1500] had a substantial effect on all the crimes charged in Counts 1–11 of the Indictment which it found proved beyond a reasonable doubt,

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and that the *actus reus* of aiding and abetting liability was thus established.[1501] In keeping with its approach throughout the Trial Judgment to separately address the four forms of assistance, encouragement and moral support that the Prosecution alleged Taylor provided to the RUF/AFRC, the Trial Chamber found that Taylor's acts and conduct had a substantial effect on the commission of the crimes charged in respect of each of four categories: (i) arms and ammunition; (ii) military personnel; (iii) operational support; and (iv) advice and encouragement.[1502]

(b) Submissions of the Parties

503. The Defence puts forward three arguments in support of its contention that the Trial Chamber erred in finding that Taylor's acts and conduct had a substantial effect on the commission of the crimes charged in Counts 1–11 of the Indictment. First, in Grounds 22 and 23, the Defence submits that the Trial Chamber erred in reasoning that Taylor's acts and conduct had a substantial effect on the commission of the crimes because the RUF/AFRC relied on the materiel he provided and that such materiel was critical in enabling the RUF/AFRC's Operational Strategy.[1503] It argues that where the quantity of materiel Taylor provided was small or could not be determined, no reasonable trier of fact could have found that the provision of arms and ammunition had a substantial effect on the commission of the crimes.[1504] It further contends that the Trial Chamber erred in considering that materiel provided by Taylor formed part of an "amalgamate of fungible resources" or part of the overall supply of materiel used by the RUF/AFRC in the commission of crimes.[1505]

504. Second, in Grounds 25 and 27–32, the Defence submits that the Trial Chamber erred in reasoning that the operational support Taylor provided to the RUF/AFRC supported, enhanced and/or sustained the RUF/AFRC's capacity to undertake its Operational Strategy.[1506] In Ground 24, the Defence makes a similar challenge to the Trial Chamber's reasoning that Taylor provided the RUF/AFRC with the high-level military expertise and reinforcements used in offensives in furtherance of the RUF/AFRC's Operational Strategy.[1507] It contends the provision of such operational support and military personnel cannot reasonably be found to have had a substantial effect on the commission of the crimes.[1508]

505. Finally, in Ground 26, the Defence challenges the Trial Chamber's reasoning that Taylor encouraged and morally supported the commission of crimes in the implementation of the RUF/AFRC's Operational Strategy.[1509] It submits that the Trial Chamber did not find that Taylor's advice altered the behaviour of the RUF/AFRC, induced them to commit more crimes or "prolonged or diminished the existence" of the RUF/AFRC.[1510] It further submits that the RUF/AFRC would have still acted in the same manner even had Taylor not advised them to do so.[1511]

506. The Prosecution responds that the Defence adopts a piecemeal approach that does not demonstrate any error in the Trial Chamber's reasonable assessment of the entirety of the evidence.[1512] First, it contends that the entire quantity of materiel Taylor provided at times is not determinative of whether the provision of materiel had a substantial effect on the commission of the crimes.[1513] It further submits that the Trial Chamber fully assessed the circumstances when considering that materiel provided by Taylor was part of the overall supply of materiel used by the RUF/AFRC.[1514] Second, it argues that the Trial Chamber reasonably found that operational support assisting military offensives and arms transactions supported the RUF/AFRC's Operational Strategy and the commission of the crimes charged.[1515] It submits that the Defence has not shown an error in the Trial Chamber's consideration of the military expertise and reinforcements Taylor provided to the RUF/AFRC.[1516] Third, the Prosecution responds that Taylor's advice to the RUF/AFRC was generally heeded and that the Trial Chamber reasonably found that this advice had a substantial effect on the commission of the crimes.[1517]

(c) Discussion

507. The Appeals Chamber notes that the Trial Chamber properly directed itself as to the *actus reus* of aiding and abetting liability at the outset of its analysis.[1518] The Trial Chamber reasoned its analysis as to whether the *actus reus* was proved in terms of four components:[1519] (i) its findings on the commission of the crimes charged and the relationship between the crimes charged and the RUF/AFRC's Operational Strategy;[1520] (ii) its findings on Taylor's acts and conduct during the Indictment Period;[1521] (iii) whether Taylor's acts and conduct constituted assistance, encouragement and moral support to the RUF/AFRC in the commission of the crimes;[1522] and (iv) whether the effect of Taylor's acts and conduct on the commission of the crimes charged was substantial.[1523]

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508. The Appeals Chamber notes that the RUF/AFRC's Operational Strategy was central to the Trial Chamber's analysis of the facts and application of the law of aiding and abetting to Taylor's acts and conduct and the crimes charged in the Indictment. The Trial Chamber found that the crimes charged were proved beyond a reasonable doubt.[1524] It also found that the RUF/AFRC directed a widespread and systematic attack against the civilian population of Sierra Leone at all times relevant to the Indictment.[1525] It further found that the crimes charged in the Indictment and the widespread and systematic attacks against the civilian population were committed in furtherance of the RUF/AFRC's Operational Strategy. That strategy was characterised by a campaign of crimes against the Sierra Leonean population and was inextricably linked to the strategy of the military operations themselves. It entailed a campaign of terror against civilians as a primary *modus operandi* to achieve military and political goals. The Appeals Chamber has affirmed these findings, and recalls that in accordance with the Statute and customary international law, it is proper for a trier of fact to consider whether, by aiding and abetting the planning, preparation or execution of a strategy to commit crimes, an accused's acts and conduct thereby had a substantial effect on some or all of the crimes committed in furtherance of that strategy and charged in the Indictment.[1526]

509. The Trial Chamber's findings regarding the RUF/AFRC's Operational Strategy provide relevant context to the commission of the crimes charged, establishing that they were committed by the RUF/AFRC during widespread and systematic attacks against the civilian population in the implementation of the RUF/AFRC's Operational Strategy. In assessing whether Taylor's acts and conduct had a substantial effect on the commission of those crimes, the Trial Chamber found that there was a direct relationship between the crimes charged in the Indictment and the RUF/AFRC's Operational Strategy.[1527]

510. In determining Taylor's liability for the crimes, the Trial Chamber assessed cumulatively Taylor's acts and conduct, undertaken personally and through his agents, during the Indictment Period.[1528] The Appeals Chamber recalls that a trier of fact is called upon to determine whether the *accused's acts and conduct*, not each individual act, had a substantial effect on the commission of the crimes charged.[1529]

511. Having considered the crimes charged in the Indictment and Taylor's acts and conduct in their factual context, the Trial Chamber assessed whether Taylor's acts and conduct constituted assistance, encouragement and moral support to the commission of the crimes by the RUF/AFRC.[1530] It found that Taylor's acts and conduct assisted, encouraged and morally supported the RUF/AFRC's Operational Strategy and had an effect on the commission of the crimes in the implementation of that Operational Strategy.[1531]

512. Finally, the Trial Chamber assessed whether Taylor's acts and conduct had a *substantial* effect on the commission of the crimes. It reasoned that Taylor's acts and conduct had a substantial effect on the commission of the crimes because they: (i) enabled the RUF/AFRC's Operational Strategy;[1532] (ii) supported, sustained and enhanced the RUF/AFRC's capacity to implement its Operational Strategy;[1533] and (iii) encouraged and morally supported the RUF/AFRC's military operations and attacks against the civilian population in furtherance of its Operational Strategy.[1534] The Appeals Chamber will now consider the Defence's challenges to the Trial Chamber's conclusion that Taylor's acts and conduct had a substantial effect on the commission of the crimes charged in the Indictment.

(i) Enabling the RUF/AFRC's Operational Strategy

513. The Defence submits that where the quantity of materiel Taylor provided in specific shipments was small or could not be determined, no reasonable trier of fact could have found that the provision of arms and ammunition was used in and had a substantial effect on the commission of the crimes.[1535] The Appeals Chamber considers that this submission does not address the totality of the Trial Chamber's findings, which demonstrate that throughout the Indictment Period, Taylor supplied or facilitated the supply of a substantial quantity of arms and ammunition to the RUF/AFRC.[1536]

514. In addition to considering the effect of Taylor's acts and conduct in quantitative terms, the Trial Chamber also considered the effect of his acts and conduct in qualitative terms, in light of the specific factual circumstances and the consequences established by the evidence.[1537] It found that Sam Bockarie and Issa Sesay would regularly turn to Taylor when the RUF/AFRC had exhausted its supply of arms and ammunition.[1538] The Trial Chamber highlighted in this regard the Magburaka Shipment as one example, which came at a time when the Junta government had depleted its existing sources of supply and was faced with an international arms embargo, and after Bockarie

and Koroma had requested material support from Taylor.[1539] Similarly, it found that shipments provided by Taylor were indispensable for the RUF/AFRC military offensives and attacks against the civilian population in the implementation of its Operational Strategy.[1540] It pointed to the Burkina Faso Shipment as a clear example, since it was unprecedented in volume and was critical in the RUF/AFRC's attack on Freetown.[1541] Taylor thus often satisfied a need or request for materiel at a particular time, and the RUF/AFRC heavily and frequently relied on materiel provided by Taylor to implement its Operational Strategy, carry out its widespread and systematic attacks against the civilian population and maintain territories.[1542] Conversely, the Trial Chamber found that the sources of supply besides Taylor were insignificant and could not sustain the RUF/AFRC's operations.[1543]

515. The Defence further contends that the Trial Chamber erred in considering that materiel provided by Taylor formed part of an "amalgamate of fungible resources" or part of the overall supply of materiel in 1999–2001 used by the RUF/AFRC in the commission of crimes, arguing that the Trial Chamber could not rely on such findings to conclude that Taylor's acts and conduct had a substantial effect on the commission of the crimes.[1544]

516. The Appeals Chamber opines that these findings demonstrate that the Trial Chamber fully evaluated the whole of the evidence in determining whether Taylor's acts and conduct had a substantial effect on the commission of the crimes. In concluding that materiel provided by Taylor formed part of an amalgamate of fungible resources in the specific context of the RUF/AFRC's attempts to recapture Freetown and commission of crimes in late January/February 1999,[1545] the Trial Chamber was addressing the Defence submission at trial that the capture of the ECOMOG materiel intervened in the causal link between the Burkina Faso Shipment provided by Taylor and the commission of the crimes after the retreat from Freetown.[1546] The Trial Chamber found that the Burkina Faso Shipment, supplied by Taylor, was "causally critical" to the capture of the ECOMOG materiel.[1547] It found that there was thus a causal link between Taylor's acts and conduct and the crimes, whether the specific materiel used in each specific crime was from the Burkina Faso Shipment or the captured ECOMOG materiel.[1548] Similarly, in finding that materiel provided by Taylor formed part of the overall supply of materiel in 1999–2001 used by the RUF/AFRC in the commission of crimes,[1549] the Trial Chamber properly recognised that the RUF/AFRC had additional sources of materiel, some attributable to Taylor and others not, at that time. The Appeals Chamber agrees with the Trial Chamber that as a matter of law, an accused need not be the only source of assistance in order for his acts and conduct to have a substantial effect on the commission of the crimes,[1550] and notes that the Trial Chamber took into consideration other sources of assistance in assessing whether Taylor's acts and conduct had a substantial effect on the commission of the crimes.[1551]

517. Whether an accused's acts and conduct have a substantial effect on the crimes is to be assessed on a case-by-case basis in light of the evidence as a whole.[1552] The Appeals Chamber affirms the Trial Chamber's qualitative and quantitative assessment in light of the whole of its findings, the specific factual circumstances and the consequences established by the evidence. In the Appeals Chamber's view, the Trial Chamber's findings demonstrate that Taylor provided materiel to the RUF/AFRC regularly throughout the Indictment Period, in comparison with the irregular and sporadic supplies from other sources, and that his provision of arms and ammunition to the RUF/AFRC was dynamic, responsive and timely, often satisfying a need or request for materiel at a particular time. Those findings further demonstrate that Taylor provided substantial quantities of materiel to the RUF/AFRC over the course of the Indictment Period, compared to minor and insufficient quantities from other sources. They illustrate that the RUF/AFRC, faced with an arms embargo, had a finite supply of materiel to support its operations, and that of that supply, the arms and ammunition provided by Taylor were critical in enabling the RUF/AFRC's Operational Strategy, in the implementation of which the crimes charged were committed.

(ii) Enhancing the Capacity of the RUF/AFRC

518. The Defence submits that the Trial Chamber erred in reasoning that the operational support and military personnel Taylor provided to the RUF/AFRC supported, enhanced and/or sustained the RUF/AFRC's capacity to undertake its Operational Strategy, submitting that the provision of this support cannot reasonably be found to have had a substantial effect on crimes.[1553] The Defence submissions rely on its contention that the Trial Chamber erred as a matter of law in not requiring that Taylor's acts of assistance, encouragement and moral support were to the physical actor and were used in the commission of the specific crime. As the Appeals Chamber has rejected that submission,[1554] the Defence argument here also fails.

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519. The Appeals Chamber notes in this regard that while arms and ammunition may in some circumstances be the means to commit crimes, in other circumstances such materiel may have an effect on the commission of crimes in a different manner. The Trial Chamber recognised that Taylor provided the RUF/AFRC with arms and ammunition in 1999 for the purpose of "keeping security", defending itself from the Kamajors and Sierra Leonean Government forces.[1555] It explicitly recalled that the RUF/AFRC during this period continued to commit crimes in territories under its control, namely the use of child soldiers, sexual slavery and enslavement.[1556] In this factual context, assisting the RUF/AFRC to defend its position could reasonably be found to have supported and sustained the RUF/AFRC's Operational Strategy and thus have had an effect on the commission of crimes in the implementation of that Operational Strategy.

520. The Appeals Chamber notes that the Trial Chamber's findings demonstrate that the operational support Taylor provided was extensive, sustained and impacted key RUF/AFRC operations critical to its functioning and its capacity to implement its Operational Strategy. The communications and logistics support Taylor provided was sustained and significant.[1557] It enhanced the capability of the RUF/AFRC leadership to plan, facilitate or order RUF/AFRC military operations during which crimes were committed,[1558] enabled the RUF/AFRC to coordinate regarding arms shipments and diamond transactions critical to its logistics[1559] and assisted the RUF/AFRC to evade attacks by ECOMOG forces.[1560] Similarly, the RUF Guesthouse enhanced the RUF/AFRC's capacity to obtain arms and ammunition from Taylor in exchange for diamonds,[1561] which was critical in enabling the RUF/AFRC's Operational Strategy.[1562] The RUF/AFRC's diamond mining activities involved the systematic commission of crimes.[1563] The logistical support Taylor provided—the provision of security escorts, the facilitation of access through checkpoints, and the much needed assistance with transport of arms and ammunition by road and by air–supported and sustained the provision of arms and ammunition by Taylor to the RUF/AFRC, and "played a vital role in the operations of the RUF/AFRC during a period when an international arms embargo was in force."[1564] With respect to the military personnel provided by Taylor, the 170 soldiers participated in RUF/AFRC military offensives during which crimes charged were committed,[1565] boosted the morale of other RUF/AFRC troops[1566] and provided the RUF/AFRC with high-level military expertise.[1567]

521. The Appeals Chamber finds that the Trial Chamber properly assessed the effect that the sustained operational support and military personnel Taylor provided to the RUF/AFRC had on the RUF/AFRC's Operational Strategy and the commission of the crimes charged, in light of the whole of its findings, the specific factual circumstances and the consequences established by the evidence. The Defence submissions regarding other forms of operational support,[1568] which were relatively minor,[1569] are summarily dismissed for failure to identify an error that would occasion a miscarriage of justice.[1570]

(iii) Encouragement and Moral Support

522. The Defence challenges the Trial Chamber's assessment that Taylor encouraged and morally supported the commission of the crimes, arguing that Taylor's acts and conduct did not alter the behaviour of the RUF/AFRC and that the RUF/AFRC would still have launched attacks and committed crimes without Taylor's advice.[1571] This submission fails to demonstrate an error, as it is well-settled that a "substantial effect" is not a "but for" cause or a "condition precedent."[1572] Moreover, the Appeals Chamber does not consider that "substantial effect" in any respect is properly assessed by resort to hypotheticals as to what would or would not have happened in an alternate world, which cannot be demonstrated by evidence.

523. In assessing whether Taylor's acts and conduct had a substantial effect on the commission of the crimes, the Trial Chamber considered its findings that during the Indictment Period, Taylor provided ongoing advice and encouragement to the RUF/AFRC, and that there was ongoing communication and consultation between Taylor and the RUF/AFRC leadership.[1573] It found that Taylor in fact provided advice, and that the RUF/AFRC leadership heeded his advice on a number of instances.[1574] Following the Intervention, Taylor repeatedly advised them to attack, capture and maintain control over Kono District, a diamondiferous area.[1575] They acted in accordance with this advice by repeatedly attacking Kono in 1998, during which they directed widespread and systematic attacks against the civilian population and committed crimes charged in the Indictment.[1576] On certain occasions Taylor demonstrably altered the RUF/AFRC's behaviour, including delaying disarmament.[1577] At times the RUF/AFRC leadership followed instructions from Taylor that directly served Taylor's, rather than their, interests.[1578]

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524. The Trial Chamber's findings and reasoning also demonstrate the specific factual circumstances and the consequences established by the evidence relevant to the effect of Taylor's acts and conduct of encouragement and moral support in qualitative terms. Taylor held a position of authority as an elder statesman and as President of Liberia, and was accorded deference by the RUF/AFRC.[1579] The RUF/AFRC referred to him as "Pa", "father", "Papay", "godfather", "Chief", or "commander in chief" (CIC), which clearly indicated the respect the RUF/AFRC had for Taylor.[1580] Taylor advised the RUF/AFRC where and how to best implement its Operational Strategy to achieve its goals, including the capture of Kono so that it could obtain more materiel to launch more offensives[1581] and making the attack on Freetown "fearful" so that the RUF/AFRC could force the government into negotiations and achieve its goal of freeing Foday Sankoh.[1582] During the Junta Period, Taylor encouraged the RUF and AFRC to work together,[1583] and immediately after the Intervention, Taylor met Sam Bockarie in Monrovia and said that he would help and provide support.[1584] During the disarmament process following the Lomé Peace Accord, Taylor privately advised Issa Sesay not to disarm and to resist disarmament in Sierra Leone.[1585] In July 2000, Taylor urged Issa Sesay to agree to disarm but not to do it in reality, saying one thing to Sesay in front of the ECOWAS Heads of State and another to him in private.[1586]

525. The Appeals Chamber does not accept the Defence submission that in order to find that Taylor's acts and conduct had a substantial effect on the commission of the crimes, the Trial Chamber was required to find that Taylor's acts and conduct altered the behaviour of the RUF/AFRC and exclude the possibility that the RUF/AFRC would still have launched attacks and committed crimes without Taylor's advice. The Appeals Chamber affirms the Trial Chamber's qualitative and quantitative assessment in light of the whole of its findings, the specific factual circumstances and the consequences established by the evidence.

(d) Conclusion

526. In light of the foregoing, the Appeals Chamber affirms the Trial Chamber's conclusion that Taylor's acts and conduct of assistance, encouragement and moral support had a substantial effect on each and all of the crimes for which he was convicted.

2. *Mens Rea*

(a) The Trial Chamber's Findings

527. The Trial Chamber found that Taylor knew his support to the RUF/AFRC would provide practical assistance, encouragement or moral support to them in the commission of crimes and that he nevertheless provided such support.[1587] It also found that Taylor was aware of the "essential elements" of the crimes committed by the RUF/AFRC, including the state of mind of the perpetrators.[1588] Accordingly, the Trial Chamber found beyond a reasonable doubt that Taylor had the requisite *mens rea* for aiding and abetting liability in respect of the crimes charged in Counts 1–11 of the Indictment.[1589] In reaching this conclusion, the Trial Chamber relied on the findings described in more detail in the Section of this Judgment entitled "Taylor's Acts, Conduct and Mental State".[1590]

(b) Submissions of the Parties

528. In Ground 17, the Defence contends that the Trial Chamber erred in concluding that Taylor possessed the requisite *mens rea* for aiding and abetting liability. First, it contends that, for the period from August 1997 to April 1998, the Trial Chamber only found that Taylor was aware of "a *possibility* that assistance might be used in *possible* crimes,"[1591] which it submits does not satisfy the *mens rea* standard for aiding and abetting liability.[1592] Second, the Defence argues that Taylor's admission that he knew in 1998 of the RUF/AFRC crimes following the Intervention cannot be taken as an admission that he knew that he was providing assistance to an organisation adopting a *modus operandi* of attacking civilians.[1593] Third, the Defence submits that a reasonable interpretation of the evidence is that Taylor provided assistance to the RUF/AFRC to assist it to hold its position and avoid defeat.[1594] Fourth, it argues that after the Lomé Peace Accord, the RUF/AFRC had committed itself to peace, and that Taylor would not have known that any assistance he provided would assist the commission of crimes.[1595]

529. In Ground 19, the Defence further contends that the Trial Chamber failed to make particularised *mens rea* findings with respect to each act of assistance.[1596] It argues that the Trial Chamber's approach was not a safe or sufficient one.[1597]

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530. The Prosecution responds that the Trial Chamber correctly found that the RUF/AFRC's Operational Strategy ran throughout the entire Indictment Period and that Taylor knew of this Operational Strategy at all relevant times.[1598] It submits that Taylor admitted knowing that the RUF/AFRC was engaged in a campaign of atrocities and that those atrocities were continuing,[1599] and the Trial Chamber reasonably assessed his testimony.[1600] It further responds that the Defence misrepresents the Trial Chamber's findings, as the Trial Chamber found that Taylor possessed the required *mens rea* even before August 1997, and, more specifically, throughout the Indictment Period.[1601] The Prosecution also responds that, in light of the ongoing campaign of atrocities committed by the RUF/AFRC, the advice and instructions that Taylor gave the RUF/AFRC leadership exclude the possibility that he did not know of the RUF/AFRC's Operational Strategy.[1602] Finally, it submits that after the Lomé Peace Accord, neither the RUF/AFRC's Operational Strategy nor Taylor's knowledge thereof changed.[1603]

531. The Prosecution further responds that the Trial Chamber was not required to make particularised findings concerning Taylor's *mens rea* with respect to specific acts of assistance.[1604] It submits that the Trial Chamber made detailed findings establishing Taylor's knowledge of the continuous RUF/AFRC crimes and found that he provided assistance to a group whose Operational Strategy was to use terror against the civilian population of Sierra Leone.[1605]

532. The Defence replies that the Trial Chamber did not make any finding that Taylor knew there was a substantial likelihood that his assistance would contribute to the crimes in respect of any date prior to April 1998.[1606] It asserts that the issue is whether Taylor knew of the RUF/AFRC's Operational Strategy at the time he provided assistance.[1607] It argues that such a conclusion would not be the only reasonable inference, as there was a reasonable possibility that he did not know of the RUF/AFRC's Operational Strategy even late in 1998.[1608]

(c) Discussion

533. The Appeals Chamber recalls that under Article 6(1) of the Statute and customary international law, the *mens rea* required for aiding and abetting liability is that an accused directly intended, knew or was aware of the substantial likelihood that his acts and conduct would assist the commission of the crime. The accused must also be aware of the essential elements of the crime, including the state of mind of the principal offender.[1609]

534. The Appeals Chamber does not accept the Defence contention that the Trial Chamber made different findings as to Taylor's knowledge in August 1997 and after April 1998.[1610] The Trial Chamber separately discussed Taylor's knowledge in August 1997 and his knowledge after April 1998 because Taylor, in his testimony, distinguished his knowledge at these particular points in time. Taylor admitted that he knew of the crimes committed by the RUF/AFRC by April 1998,[1611] but denied that he knew of those crimes earlier, in August 1997.[1612] The Trial Chamber's findings are thus appropriately addressed to Taylor's knowledge as of August 1997.[1613] Further, the Trial Chamber explicitly found that Taylor knew of the RUF/AFRC's Operational Strategy and intent to commit crimes "from the clear and consistent information he received after his election."[1614] Finally, the Trial Chamber's ultimate conclusion, with explicit reference to the above findings,[1615] was that *at all relevant times* Taylor "knew that his support to the RUF/AFRC would provide practical assistance, encouragement or moral support to them in the commission of crimes."[1616]

535. As the Trial Chamber found that the RUF/AFRC had an Operational Strategy to systematically commit crimes against the civilian population of Sierra Leone throughout the Indictment Period and that Taylor knew of that Operational Strategy at all relevant times, the Defence contention that before April 1998, Taylor was only aware of a "possibility that assistance might be used in possible crimes" is unsustainable.[1617] In the Appeals Chamber's view, this equally applies to the period following April 1998.

536. On appeal, it is not sufficient for a party to put forward an "alternative" interpretation of the evidence and invite the Appeals Chamber to consider *de novo* whether such an alternative interpretation is a reasonable one.[1618] The Defence submission that Taylor supported the RUF/AFRC in order to prevent the commission of future crimes by ensuring that the RUF/AFRC was not defeated on the battlefield[1619] is an assertion unsupported by any evidence and is dismissed. Moreover, the findings made and supported by the Trial Chamber regarding exchanges between Taylor and Sam Bockarie, including Taylor's instruction that the attack on Freetown be made "fearful" for the

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purpose of pressuring the Sierra Leonean government into negotiations for the release of Foday Sankoh,[1620] exclude the "alternative" interpretation put forward by the Defence.[1621]

537. Situations *may* change and develop over time, and the trier of fact must always determine the accused's *mens rea* at the relevant time.[1622] The Trial Chamber found, however, that the RUF/AFRC's Operational Strategy did not change in fact.[1623] It further found that Taylor had knowledge of this Operational Strategy at all relevant times.[1624] Taylor continued to directly and intimately participate in ECOWAS peace efforts to address the situation in Sierra Leone.[1625] The Trial Chamber specifically considered the Defence's contention at trial that Taylor's involvement with the RUF/AFRC was solely for the purposes of peace,[1626] but found that Taylor "was engaged in arms transactions at the same time that he was involved in the peace negotiations in Lomé, publicly promoting peace at the Lomé negotiations, while privately providing arms and ammunition to the RUF."[1627] In addition, it found that after the signing of the Lomé Peace Accord, when the RUF/AFRC leadership was inclined to disarmament and the peace process Taylor encouraged the RUF/AFRC leadership not to disarm and continued to supply them with weapons.[1628]

538. The Trial Chamber had before it significant evidence establishing public knowledge of the crimes committed by the RUF/AFRC, and Taylor's knowledge of those crimes in particular. The Trial Chamber carefully assessed Taylor's testimony as to his knowledge, including his admission that by April 1998 anyone providing support to the RUF/AFRC "would be supporting a group engaged in a campaign of atrocities against the civilian population."[1629] The Trial Chamber recognised that Taylor's admission related to a particular time,[1630] and it specifically considered Taylor's denial that he knew that the RUF/AFRC was committing crimes in Sierra Leone before that time.[1631] It found that, based on the information available to Taylor from his daily security briefings, his direct participation in the ECOWAS Committee of Five, his prior knowledge of the RUF's criminal activities and the international community's reaction to the situation in Sierra Leone, the only reasonable inference was that as early as August 1997 Taylor had the same knowledge of the Operational Strategy as he admitted to having in April 1998.[1632]

539. The Appeals Chamber finds that the Trial Chamber properly evaluated the evidence of Taylor's knowledge, including his testimony, his public role as President of Liberia and member of the ECOWAS Committee of Five, his relationship with the RUF/AFRC, the reports of ECOWAS and the UN and public reports by the media and non-governmental organisations. The Appeals Chamber further finds that the Trial Chamber carefully assessed this evidence in respect of Taylor's knowledge at the relevant times[1633] and the evolution of Taylor's relationship and involvement with the RUF/AFRC, and carefully considered the Parties' submissions at trial.

540. The Appeals Chamber accordingly affirms the Trial Chamber's finding that while Taylor was physically remote from the crimes, the only reasonable conclusion based on the totality of the evidence was that he knew of the RUF/AFRC's Operational Strategy. The Appeals Chamber further affirms the Trial Chamber's conclusion that Taylor knew that his support to the RUF/AFRC would assist the commission of crimes in the implementation of the RUF/AFRC's Operational Strategy. The Trial Chamber also reasonably found that, in addition to knowing of the RUF/AFRC's intent to commit crimes, Taylor was aware of the specific range of crimes being committed during the implementation of the RUF/AFRC's Operational Strategy and was aware of the essential elements of the crimes. In light of the foregoing, the Appeals Chamber agrees with the Trial Chamber's conclusion that Taylor possessed the requisite *mens rea* for aiding and abetting liability.[1634]

3. Conclusion

541. Defence Grounds 17, 19 and 22–32 are therefore dismissed in their entirety.

B. Planning Liability

542. The Appeals Chamber has affirmed the Trial Chamber's factual findings regarding Taylor's participation in designing the Bockarie/Taylor Plan.[1635] The Appeals Chamber has also concluded that the Trial Chamber properly articulated and applied the *actus reus* and *mens rea* elements of planning liability.[1636]

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543. The Defence's remaining challenges to Taylor's conviction for planning crimes address the Trial Chamber's application of the law to the facts found and its ultimate conclusions that the *actus reus* and *mens rea* elements of planning liability were proved beyond a reasonable doubt. First, in Grounds 10, 11, 12 and 13, it challenges the Trial Chamber's conclusion that the *actus reus* of planning liability was proved beyond a reasonable doubt. Second, in Grounds 14 and 15, it challenges the Trial Chamber's conclusion that Taylor possessed the requisite *mens rea* for planning the crimes under the 11 Counts for which he was convicted. Third, in Ground 11, the Defence challenges Taylor's convictions for crimes committed in Kono and Makeni during the Freetown Invasion.[1637]

1. *Actus reus*

(a) The Trial Chamber's Findings

544. The Trial Chamber found beyond a reasonable doubt that Taylor intentionally designed the Bockarie/Taylor Plan for an attack on Freetown and thereby had a substantial effect on the crimes committed during and after the Freetown Invasion between December 1998 and February 1999.[1638] In reaching this conclusion, the Trial Chamber relied on the findings described in more detail earlier in this Judgment.[1639]

545. The Trial Chamber concluded that Taylor and Bockarie intentionally designed a plan for an RUF/AFRC attack on Freetown, the Bockarie/Taylor Plan. This Plan had the "objective of reaching Freetown, releasing Foday Sankoh from prison and regaining power."[1640] It was to be implemented in a "fearful" manner in order to pressure the government of Sierra Leone into negotiations for the release of Sankoh, and "all means" were to be used to get to Freetown.[1641] SAJ Musa had a separate plan to attack Freetown.[1642] His goal was to reinstate the army,[1643] and the Trial Chamber noted that according to Prosecution witness Alimamy Bobson Sesay, as accepted by the Defence, SAJ Musa "ordered his forces to proceed to Freetown without killing, looting or burning, indicating that he did not have a campaign of terror in mind."[1644]

546. The forces under SAJ Musa's command started their attack on Freetown independently of the Bockarie/Taylor Plan.[1645] However, following SAJ Musa's death on 23 December 1998,[1646] Alex Tamba Brima (a.k.a. Gullit) took over leadership of the troops, at Benguema outside of Freetown.[1647] Gullit was willing to work together with Sam Bockarie[1648] and he resumed contact with Bockarie.[1649] The troops commanded by Gullit in Freetown were subordinated to and used by Bockarie in furtherance of the Bockarie/Taylor Plan.[1650] Further execution of the Plan was carried out with close coordination between Bockarie and Gullit,[1651] with Gullit in frequent communication with Bockarie[1652] and taking orders from Bockarie.[1653] Bockarie was in frequent and daily contact via radio or satellite phone with Taylor in December 1998 and January 1999 during the Freetown Invasion, either directly or through Benjamin Yeaten.[1654] The Trial Chamber concluded that in these circumstances, the Bockarie/Taylor Plan had a substantial effect on the crimes committed during and after the Freetown Invasion.[1655]

(b) Submissions of the Parties

547. The Defence first submits, in Ground 11, that the Trial Chamber failed to find that Taylor designed a plan for the commission of crimes.[1656] Second, in Ground 13 the Defence argues that the Trial Chamber erred in finding that Sam Bockarie exercised effective control over Gullit, since it failed to find that Bockarie had the ability to prevent or punish the commission of crimes by Gullit and the troops under his command.[1657] It submits that Gullit's insubordination to Bockarie is indicative that Gullit was not bound to obey Bockarie's orders, but only followed them when he agreed or considered that it was in his interest to do so.[1658] Third, in Grounds 10 and 13, it submits that the Trial Chamber erred in finding that Gullit and forces under his command were incorporated into the Bockarie/Taylor Plan. It argues that their coordination merely implies an effort to ensure the harmonious operation of two separate plans,[1659] and that there was no evidence of the difference between the Bockarie/Taylor Plan and SAJ Musa's plan in terms of strategy, timing, troop movements, intelligence, locations, operational plans, or manoeuvres.[1660] Fourth, in Ground 12, it argues that the Trial Chamber erroneously held Taylor liable for an expanded or evolved plan.[1661] Finally, in Ground 13, it argues that because the troops under Gullit's command had previously committed crimes, the Trial Chamber could not reasonably find that the Bockarie/Taylor Plan had a substantial effect on the crimes committed in Freetown.[1662]

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548. The Prosecution responds that the Trial Chamber found that the Bockarie/Taylor Plan was a plan to commit crimes.[1663] It also argues that the Defence submissions regarding Gullit's incorporation into the Bockarie/Taylor Plan and Sam Bockarie's use of Gullit for the implementation of this Plan are based on an erroneously narrow and fragmented view of how the Trial Chamber actually determined one plan to be abandoned and the other to be adopted.[1664] It submits that the Trial Chamber's analysis involved a detailed and close consideration of a wide range of factors, including, *inter alia,* communications between Gullit and Bockarie after SAJ Musa's death, coordination between Bockarie's forces and Gullit's troops, reinforcements sent by Bockarie which joined Gullit's troops, and the implementation of instructions issued by Bockarie to Gullit.[1665] Moreover, it submits that it was possible for the Trial Chamber to differentiate the Bockarie/Taylor Plan from SAJ Musa's plan in terms of their goals and/or the commission of crimes during their implementation.[1666] The Prosecution further responds that the Trial Chamber properly found that Gullit was being ordered by Bockarie,[1667] and that, contrary to the Defence submissions, Taylor was not held liable for planning based on the daily updates he received.[1668]

549. The Defence replies that the Prosecution does not demonstrate that the Bockarie/Taylor Plan was a plan to commit the 11 "concrete crimes" for which Taylor was convicted.[1669] It submits that the Trial Chamber was unequivocal that the plan evolved from that designed by Sam Bockarie and Taylor, to one encompassing Gullit's troops.[1670] It also argues that the Trial Chamber concluded that the Bockarie/Taylor Plan substantially contributed to the commission of crimes while Gullit was operating under Bockarie's command, and that the point in time at which this happened is therefore relevant to Taylor's convictions.[1671]

(c) Discussion

550. The Appeals Chamber recalls that the *actus reus* of planning liability is that the accused participated in designing an act or omission and thereby had a substantial effect on the commission of the crime.[1672] In order to incur planning liability, the accused need not design the conduct alone, and the accused need not be the originator of the design or plan.[1673] Whether the accused's acts "amount to a substantial contribution to the crime for the purposes of planning liability is to be assessed on a case-by-case basis in light of the evidence as a whole."[1674]

551. The Trial Chamber found that the Bockarie/Taylor Plan was a plan for the commission of crimes against the civilian population, namely a campaign of crimes and acts of terror, in accordance with Taylor's "make fearful" and "use all means" instructions, and the RUF/AFRC's Operational Strategy.[1675] The Appeals Chamber affirms this finding.

552. The Trial Chamber convicted Taylor for the crimes under all eleven Counts of the Indictment in the invasion of and retreat from Freetown, between December 1998 and February 1999.[1676] The Appeals Chamber agrees with the Defence that the critical issue to Taylor's conviction for planning the crimes committed in Freetown and the Western Area is whether Sam Bockarie was in fact in control of a concerted and coordinated effort, with Gullit as his subordinate, to implement the Bockarie/Taylor Plan in Freetown.[1677] This issue concerns the relationship between the Bockarie/Taylor Plan and the commission of the crimes and whether this Plan had a substantial effect on the crimes. Accordingly, whether and when Gullit was incorporated into the Bockarie/Taylor Plan and used by Bockarie to implement the Plan is of critical importance.[1678] However, the Defence misconstrues the Trial Chamber's factual use of the term "effective control", that is, actual control, for the element of superior responsibility under Article 6(3) of the Statute, where that term is used as a term of art. The Defence has merely attempted to build a legal argument out of what is a question of fact.[1679]

553. The Defence challenges to the Trial Chamber's finding that Gullit was incorporated into the Bockarie/Taylor Plan and that Sam Bockarie assumed control over Gullit following the resumption of contact on or around 23 December 1998 rely on its assertion that Gullit did not comply with orders from Bockarie at that time.[1680] In finding that Gullit was incorporated into the Bockarie/Taylor Plan and that Bockarie exercised control over Gullit, the Trial Chamber, in addition to relying on orders issued and complied with, also relied on the close coordination and frequent communications between Bockarie and Gullit.[1681]

554. Many witnesses testified regarding the resumption of contact between Sam Bockarie and Gullit following SAJ Musa's death, and their close coordination of the Freetown Invasion.[1682] The Trial Chamber considered the evidence of Perry Kamara and Alimamy Bobson Sesay to be of particular value as to what occurred during the

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operation since they were the only two witnesses that participated in the attack on Freetown itself.[1683] Witnesses stationed with Bockarie and commanders in other areas of Sierra Leone also testified regarding the resumption of communications between Bockarie and Gullit after the death of SAJ Musa.[1684] The witnesses agreed that communications were regular throughout the Freetown Invasion and concerned the progress of the operation.[1685] The evidence also indicated that aside from Bockarie, Gullit was in communication with Bockarie's commanders, including Boston Flomo (a.k.a. Rambo), Superman and Issa Sesay.[1686]

555. The Trial Chamber considered the Defence submission that Gullit had initially defied Sam Bockarie's instructions to wait for reinforcements and only called Bockarie from Freetown because his troops were in trouble.[1687] However, it noted that:

> The evidence of Bobson Sesay and Kamara converge on the two most important aspects: first, both witnesses stated that it was Gullit who initiated the contact with Bockarie—Bobson Sesay testified that this was to seek reinforcements, while Kamara testified that it was to seek advice; second, neither suggested, as the Defence sought to argue, that by moving forward to Freetown without Bockarie's reinforcements, Gullit was rejecting either Bockarie's authority or his offer of assistance. On their evidence, Gullit was receptive to the idea of reinforcements, but military exigencies dictated a more immediate advance into Freetown.[1688]
>
> The evidence of Dauda Aruna Fornie and Isaac Mongor's evidence on examination-in-chief also support the idea that Gullit did not wait for Bockarie's reinforcements due to those reinforcements being unduly delayed, rather than as a refusal of Bockarie's support. Dauda Aruna Fornie also confirmed that Gullit requested reinforcements from Bockarie before the commencement of the 6 January attack.[1689]

Based on this evidence the Trial Chamber found that "by advancing to Freetown from Waterloo and Benguema without Bockarie's reinforcements, Gullit was not rejecting either Bockarie's authority or his offer of assistance."[1690]

556. The Trial Chamber also considered the Defence contention that coordination between Sam Bockarie and Gullit broke down after Gullit initiated the attack on Freetown.[1691] However, it found that the evidence indicated otherwise, as the radio room in Buedu and the troops in Freetown communicated frequently during the assault on Freetown concerning strategic matters,[1692] and Bockarie assisted the commanders in Freetown by transmitting "448 messages," which had originally been sent by Taylor's subordinates in Monrovia, to the fighters in the capital.[1693] Moreover, it considered the Defence contention that Gullit and Bockarie were merely coordinating their efforts to fight a common enemy, but found that this premise failed to capture the level of coordination that took place between Bockarie and Gullit and the level of control that Bockarie exercised over Gullit.[1694] The Trial Chamber further considered Gullit's compliance with Bockarie's orders.

557. The Appeals Chamber accepts the Trial Chamber's findings that Gullit complied with specific orders from Sam Bockarie in the implementation of the Bockarie/Taylor Plan, including Bockarie's repeated orders to use terror tactics against the civilian population of Freetown.[1695] The Appeals Chamber accepts that there was extensive evidence on the record regarding the communications and coordination between Bockarie and Gullit that commenced following SAJ Musa's death, and agrees with the Trial Chamber's conclusion that Gullit was incorporated into the Bockarie/Taylor Plan following his initial contact with Sam Bockarie after SAJ Musa's death. The Appeals Chamber further accepts that that there was extensive evidence on the record regarding the orders given by Bockarie to Gullit and Gullit's compliance with these orders, and affirms the Trial Chamber's finding that Bockarie exercised control over Gullit. Notably, Gullit implemented Bockarie's repeated orders, in accordance with Taylor's instructions, to make Freetown "fearful" and use terror tactics against the civilian population of Freetown.[1696]

558. While the Defence further contends that the Trial Chamber could not conclude that Gullit "abandoned" SAJ Musa's plan for the Bockarie/Taylor Plan,[1697] the Trial Chamber distinguished these two plans and reasonably found that SAJ Musa's plan ended with his death.[1698] It noted that it was uncontested by the Defence that SAJ Musa's plan was to take control of Freetown and to do so without using terror or committing crimes against the civilian population.[1699] The Bockarie/Taylor Plan was to be implemented in a "fearful" manner through the commission of crimes and the use of terror tactics in order to achieve its objectives.[1700] Moreover, the Trial Chamber found that SAJ Musa

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had the objective of reaching Freetown in order to reinstate the army,[1701] while the objective of the Bockarie/Taylor Plan was "to improve the RUF's negotiating position in relation to any future peace talks and the release of Foday Sankoh."[1702] Accordingly, in the Appeals Chamber's view, the Trial Chamber reasonably found that the Bockarie/Taylor Plan was implemented in Freetown.[1703] Furthermore, while the Defence contends that Taylor was held criminally liable on the basis of an evolved plan,[1704] at no point did the Trial Chamber refer to a different, expanded or evolved plan being implemented in Freetown, and it held Taylor criminally liable for the implementation of the Bockarie/Taylor Plan according to its original design.[1705]

559. As to the Defence contention that Taylor was held liable on the basis of updates that he received regarding the Plan's implementation, the Appeals Chamber is of the view that the Trial Chamber considered those updates as evidence that Sam Bockarie was using Gullit to implement the Bockarie/Taylor Plan, and not as the basis for Taylor's planning conviction. As previously noted, the critical issue to Taylor's conviction for planning the crimes in Freetown is whether Bockarie exercised control over Gullit,[1706] not the updates Taylor received.

560. Finally, the Appeals Chamber has rejected the Defence contention that a finding of substantial effect is precluded by the fact that RUF/AFRC troops would have committed crimes in any event.[1707] The Trial Chamber relied on substantial evidence that Gullit ordered massive atrocities and acts of terror in Freetown in accordance with Sam Bockarie's explicit and repeated orders to do so, which was in accordance with Taylor's instruction to Bockarie to make Freetown "fearful".[1708]

(d) Conclusion

561. In light of the above, the Appeals Chamber affirms the Trial Chamber's conclusion that Taylor participated in designing an act or omission and thereby had a substantial effect on the commission of the crimes, thus establishing the *actus reus* of planning liability.

2. *Mens Rea*

(a) The Trial Chamber's Findings

562. The Trial Chamber concluded that, in designing the Bockarie/Taylor Plan, Taylor intended that the crimes charged in Counts 1–11 of the Indictment "be committed" or was aware of the substantial likelihood that RUF/AFRC forces would commit such crimes in executing the Bockarie/Taylor Plan.[1709] The Trial Chamber found that Taylor knew of the RUF/AFRC's Operational Strategy and intent to commit crimes.[1710] It further found that by his instruction to make the attack "fearful," which was repeated many times by Sam Bockarie during the course of the Freetown Invasion, and by his instruction to use "all means," Taylor demonstrated his awareness of the substantial likelihood that crimes would be committed during the execution of the Bockarie/Taylor Plan.[1711] In reaching this conclusion, the Trial Chamber relied on the findings described in more detail in the Section of this Judgment entitled "Taylor's Acts, Conduct and Mental State."[1712]

(b) Submissions of the Parties

563. The Defence, in Grounds 14 and 15, challenges the Trial Chamber's finding that Taylor possessed the requisite *mens rea* to be held criminally liable for planning the commission of crimes. It argues that the Trial Chamber erred in establishing Taylor's *mens rea* on the basis of his awareness of past crimes committed by the RUF/AFRC, and that this awareness is insufficient to satisfy the *mens rea* for planning.[1713] The Prosecution responds that the Defence fails to demonstrate an error in the Trial Chamber's conclusion in light of the totality of the evidence.[1714]

(c) Discussion

564. The Appeals Chamber recalls that the *mens rea* of planning liability is that the accused directly intended, knew or was aware of the substantial likelihood that his acts of planning would have an effect on the commission of the crimes.[1715] An accused may be properly found to have intended certain crimes and been aware of the substantial likelihood that others would be committed.[1716]

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565. The Defence submissions do not address the evidence relied on by the Trial Chamber or its extensive reasoning regarding Taylor's knowledge.[1717] The Appeals Chamber concludes that the Trial Chamber was reasonable in finding that Taylor knew of the RUF/AFRC's Operational Strategy and intent to commit crimes,[1718] and that the RUF/AFRC was committing all crimes charged in the Indictment.[1719] The Appeals Chamber further concludes that the Trial Chamber was reasonable in finding that by his "make fearful" and "use all means" instructions, Taylor demonstrated his intention that the crimes charged in Counts 1–11 and part of the RUF/AFRC's Operational Strategy would be committed during the execution of the Plan.[1720]

(d) Conclusion

566. In light of the foregoing the Appeals Chamber affirms the Trial Chamber's finding that Taylor possessed the requisite *mens rea* for planning liability.

3. Taylor's Liability for Planning the Crimes Committed in Kono and Makeni

(a) The Trial Chamber's Findings

567. The Trial Chamber convicted Taylor for planning crimes committed under all counts of the Indictment in Kono District and under Count 9 of the Indictment in Bombali District, where Makeni is located.[1721]

(b) Submissions of the Parties

568. The Defence, in Ground 11, challenges Taylor's convictions for crimes committed in Kono and Makeni during the Freetown Invasion. It argues that the Trial Chamber failed to find that any crimes were committed in these locations.[1722] The Prosecution responds that the Trial Chamber did find that crimes were committed in Kono and Makeni and cites examples of crimes under Count 9 of the Indictment that were found to have been committed in these locations.[1723] The Defence replies that the crimes under Count 9 of the Indictment found to have been committed in Kono were committed after the attacks on Kono in December 1998, and were therefore not committed in the implementation of the Bockarie/Taylor Plan.[1724] In relation to the crimes found to have been committed under Count 9 of the Indictment in Makeni,[1725] the Defence argues that these crimes are not connected to the Bockarie/Taylor Plan since the victim, a child soldier, was fighting with SAJ Musa's troops, not with Bockarie's forces acting in accordance with the Bockarie/Taylor Plan.[1726]

(c) Discussion

569. The Trial Chamber found that in accordance with the Bockarie/Taylor Plan, the RUF/AFRC forces in December 1998 launched military offensives on Kono and Makeni in order to reach Freetown.[1727] The assault on Koidu Town, in Kono District, was launched on 17 December 1998, and the troops moved towards the west after the successful capture of the city.[1728] On 24 December 1998, the RUF/AFRC began its assault on Makeni.[1729]

570. The Defence contended at trial that during the Freetown Invasion no crimes were committed in the attacks on Kono District and Makeni (Bombali District).[1730] The Trial Chamber addressed this contention in its Judgment and found that "[d]uring the course of the implementation of [the Bockarie/Taylor Plan], these forces committed crimes charged in the Indictment."[1731] It specifically recalled its findings that the crimes of enslavement (Count 10) and conscription and use of child soldiers (Count 9) were committed in these locations,[1732] and entered convictions under all Counts in the Indictment for Kono District and Count 9 for Bombali District.[1733]

571. The fair trial requirements of the Statute include the right of the accused to a reasoned opinion by the Trial Chamber under Article 18 of the Statute and Rule 88(C) of the Rules.[1734] The reasoned opinion requirement relates to a Trial Chamber's Judgment rather than to each and every submission made at trial.[1735] As a general rule, a Trial Chamber is required to make findings only on those facts which are essential to the determination of guilt in relation to a particular Count.[1736] Having reviewed the trial record, the Appeals Chamber finds that the Trial Chamber only specified crimes committed under Counts 9 and 10 of the Indictment,[1737] and failed to specify or discuss the crimes charged in the Indictment under Counts 1–8 and 11 that it concluded were committed in Kono District during the implementation of the Bockarie/Taylor Plan.

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572. The Trial Chamber provided no reasons for entering planning convictions in the Disposition for crimes committed under Counts 1–8 and 11 in Kono District between December 1998 and February 1999, and the Appeals Chamber finds that to that extent, the Disposition for the planning conviction should be modified to exclude Kono District under those Counts.[1738]

573. However, the Trial Chamber did reference its specific findings and provided a reasoned opinion for Taylor's planning convictions under Count 9 for crimes in Makeni and Counts 9 and 10 for crimes in Kono District. The Defence contends that the crimes found to have been committed at these locations were not connected to the Bockarie/Taylor Plan, but the Appeals Chamber rejects the Defence submissions and affirms the Trial Chamber's findings.[1739]

4. Conclusion

574. In light of the foregoing, the Appeals Chamber grants Defence Ground 11 in part and to that [graphic]extent, the Disposition for the planning conviction should be modified to exclude Kono District under the relevant Counts. The remaining parts of Defence Ground 11 and the entirety of Defence Grounds 10 and 12–15 are dismissed. The Appeals Chamber will consider any implications of its findings on the sentence.

C. Cumulative Convictions

1. The Trial Chamber's Findings

575. The Trial Chamber found that it was legally permissible to enter cumulative convictions for the crimes of rape (Count 4) and sexual slavery (Count 5).[1740] It concluded that although both crimes are forms of sexual violence, each crime contains a distinct element not required by the other: first, rape requires non-consensual sexual penetration, while sexual slavery can be committed through a range of sexual acts; and second, sexual slavery requires proof that the perpetrator exercised control or ownership over the victim, while rape does not.[1741]

2. Submissions of the Parties

576. In Ground 41, the Defence submits that the Trial Chamber erred in impermissibly entering cumulative convictions for the offences of rape and sexual slavery. It contends that as "non-consensual sexual penetration," an element of rape, is in fact an "act of a sexual nature," which is an element of sexual slavery, sexual slavery is the "more specific provision" encompassing the offence of rape.[1742] The Prosecution responds that the Trial Chamber's findings on cumulative convictions for rape and sexual slavery are in accordance with settled SCSL jurisprudence.[1743] Relying on the ICTY *Kunarac et al.* Appeal Judgment, it contends that the Trial Chamber correctly found that the offence of rape is "materially distinct" from the offence of sexual slavery.[1744] In reply, the Defence argues that *Kunarac et al.* is distinguishable because in that case, cumulative convictions were entered for the crimes of rape and enslavement, whereas here the Trial Chamber entered cumulative convictions for the crimes of rape and sexual slavery.[1745]

3. Discussion

577. In *Sesay et al.*, the Appeals Chamber held that cumulative convictions are permissible if the statutory provisions concerned contain materially distinct elements; an element of a crime is materially distinct if it requires proof of a fact not required by the other.[1746] The Appeals Chamber agrees with the Trial Chamber that, for the reasons it stated, the offences of rape and sexual slavery each require proof of an element not required by the other.[1747]

4. Conclusion

578. Defence Ground 41 is dismissed in its entirety.

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D. Alleged Liability for Ordering and Instigating Crimes

579. In its Grounds 1 and 2, the Prosecution submits that the Trial Chamber erred in law and in fact in failing to convict Taylor of ordering and instigating certain crimes charged in the Indictment. It argues that the Appeals Chamber should recognise that Taylor is guilty of additional forms of criminal participation in the commission of the crimes and accurately reflect that liability by entering additional convictions for ordering and instigating.[1748]

580. The Trial Chamber articulated the elements of liability for ordering as follows:

> Ordering consists of the following physical and mental elements:
>
> i. The Accused intentionally instructed another to carry out an act or engage in an omission,
>
> ii. With the intent that a crime or underlying offence be committed in the execution of those instructions, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed in the execution of those instructions.

The Trial Chamber further explained that:

> While the Prosecution need not prove that there existed a formal superior-subordinate relationship between the accused and perpetrator it must provide "proof of some position of authority on the part of the Accused that would compel another to commit a crime in following the Accused's order". Such authority may be informal and of a temporary nature, and consequently, the order issued by the Accused need not be legally binding upon the physical perpetrator or intermediary perpetrator.
>
> The order need not take any particular form. However, ordering requires a positive act and cannot be committed by omission. Because the ICTY Appeals Chamber held that the Accused need merely "instruct another person to commit an offence" it is clear that liability for ordering may ensue where the Accused issues, passes down, or otherwise transmits the order, and that he need not use his position of authority to "convince" the perpetrator to commit the crime or underlying offence. Furthermore, the Accused need not give the order directly to the physical perpetrator, and an intermediary lower in the chain of command who passes the order on to the perpetrator may also be held responsible for ordering the underlying offence as long as he has the requisite state of mind.
>
> While the issuance of the order must have been a factor substantially contributing to the physical perpetration of a crime or underlying offence, the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the Accused's order.[1749]

581. The Trial Chamber articulated the elements of liability for instigation as follows:

> Instigating consists of the following physical and mental elements:
>
> i. The accused, through either an act or an omission, prompted another to act in a particular way,
>
> ii. With the intent that a crime or underlying offence be committed as a result of such prompting, or with the awareness of the substantial likelihood that a crime or underlying offence would be committed as the result of such prompting.

The Trial Chamber further explained that:

> The Accused's prompting may be implicit, written or otherwise non-verbal, and does not require that the accused have "effective control" over the perpetrator or perpetrators. The Accused's prompting may consist of a positive act, but may also be accomplished by omission.
>
> While the Accused's prompting must have been a factor "substantially contributing to the conduct of another person committing the crime", the Prosecution need not prove that the crime or underlying offence would not have been perpetrated but for the prompting of the Accused.[1750]

1. The Trial Chamber's Findings

582. With respect to instigation as a form of criminal participation, the Trial Chamber concluded:

> The Trial Chamber, having already found that the Accused is criminally responsible for aiding and abetting the commission of the crimes in Counts 1–11 of the Indictment, does not find that the Accused also instigated those crimes.[1751]

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583. With respect to ordering as a form of criminal participation, the Trial Chamber concluded:

> The Trial Chamber has found that while the Accused held a position of authority amongst the RUF and RUF/AFRC, the instructions and guidance which he gave to the RUF and RUF/AFRC were generally of an advisory nature and at times were in fact not followed by the RUF/AFRC leadership. For these reasons, the Trial Chamber finds that the Accused cannot be held responsible for ordering the commission of crimes.[1752]

2. Submissions of the Parties

584. In its Ground 1, the Prosecution argues that the Trial Chamber erred in law in concluding that liability for ordering was not proved because Taylor's instructions and guidance to the RUF/AFRC were generally advisory and at times were not followed.[1753] It submits that as a matter of law, the Trial Chamber should have still assessed whether liability for ordering was proved for those instances where Taylor's instructions were followed.[1754] The Prosecution further argues that the Trial Chamber erred in fact in finding that Taylor's instructions were advisory in nature and therefore did not satisfy the *actus reus* element of liability for ordering, as it submits that the Trial Chamber's findings[1755] demonstrate that Taylor gave instructions with sufficient authority to establish the requisite element of compulsion for ordering liability.[1756] It points to the Trial Chamber's findings regarding the relationship between Taylor and the RUF/AFRC leadership[1757] and the numerous occasions on which the RUF/AFRC leadership followed Taylor's instructions.[1758] It further submits that the Trial Chamber's findings also demonstrate that Taylor possessed the *mens rea* for liability for ordering, as they prove that he was at least aware of the substantial likelihood that crimes would be committed in the implementation of his instructions.[1759]

585. In its Ground 2, the Prosecution argues that the Trial Chamber erred in law by failing to enter a conviction for instigation because it had already convicted Taylor of aiding and abetting the relevant crimes.[1760] It argues that as a matter of law a Trial Chamber is required to enter all convictions proved beyond a reasonable doubt,[1761] and that the jurisprudence contains a number of examples where an accused has been convicted under multiple forms of participation in relation to the same crimes.[1762] It further argues that the Trial Chamber erred in not entering a conviction for instigation since its findings prove beyond a reasonable doubt that the *actus reus* and *mens rea* elements for this form of criminal participation were satisfied.[1763]

586. With respect to both Grounds 1 and 2, the Prosecution avers that entering convictions for ordering and instigating crimes is necessary to fully describe Taylor's culpability and provide a complete picture of his criminal conduct.[1764] It submits in this regard that the Trial Chamber's errors occasioned a miscarriage of justice, as the verdict does not fully reflect Taylor's culpability.[1765] It further requests that Taylor's sentence be increased in order to reflect the totality of his criminal conduct.[1766]

587. The Defence submits in response to Prosecution Ground 1 that the Trial Chamber declined to enter convictions for ordering based on a number of factors, not simply its finding that Taylor's orders were at times not followed.[1767] It further argues that the Prosecution does not show that the Trial Chamber erred in finding that Taylor's instructions were advisory,[1768] and that the Prosecution merely advances an alternative interpretation of the evidence.[1769] It also avers that the Prosecution submissions do not establish the required elements for ordering liability.[1770]

588. The Defence submits in response to Prosecution Ground 2 that contrary to the Prosecution's submission, a trier of fact should only enter convictions on forms of participation that describe the accused's conduct most accurately.[1771] It avers that well-established jurisprudence demonstrates that "[t]he modes of liability set out in Article 6(1) of the Statute are neither mutually exclusive, nor do they automatically require overlapping findings even where the elements of a certain mode may be satisfied."[1772] It argues that the Trial Chamber followed this well-established practice here, properly exercised its discretion and provided adequate reasons for its conclusion.[1773] It further contends that the Trial Chamber's findings do not satisfy the *actus reus* and *mens rea* elements for instigation.[1774]

3. Discussion

589. The Appeals Chamber recalls that the *actus reus* of ordering liability is that an accused ordered an act or omission that has a substantial effect on the commission of the crimes, while the *actus reus* of instigating liability

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is that an accused prompted another person to act in a particular way that has a substantial effect on the commission of the crimes.[1775] For both ordering and instigating liability, the *mens rea* is established if an accused acted with direct intent, knowledge or awareness of a substantial likelihood that his acts and conduct would have an effect on the commission of the crime.[1776] The Trial Chamber properly articulated the elements of these forms of liability.[1777]

590. The Appeals Chamber notes that even if Prosecution Grounds 1 and 2 were accepted, this would have no impact on the existing convictions and Taylor would not be convicted of more crimes than he already has been. Furthermore, the Prosecution submissions rely entirely on the Trial Chamber's findings regarding Taylor's conduct, which the Trial Chamber adjudged culpable. The Appeals Chamber has affirmed the Trial Chamber's findings regarding Taylor's culpable conduct and the convictions entered for that conduct.[1778] The Prosecution does not point to any additional conduct that the Trial Chamber did not find culpable and take into account in its Disposition and Sentence. In this regard, the Trial Chamber extensively considered Taylor's authority and leadership role with respect to both his culpable conduct for aiding and abetting and planning[1779] and the appropriate sentence.[1780] The issue presented solely concerns the descriptive characterisation, not gravity, of Taylor's criminal liability for the crimes for which he stands convicted. In *Brima et al.*, the Appeals Chamber held regarding a Prosecution appeal that "no useful purpose will be served by the Appeals Chamber now entering convictions . . . having regard to the adequate global sentence imposed on each [accused]."[1781]

591. Upholding an accused's fair trial rights, the trier of fact must determine whether the Prosecution has proved an accused's guilt beyond a reasonable doubt for the crimes charged in the Indictment. If the trier of fact concludes that an accused's guilt has been proved, it must determine an appropriate sentence in light of the totality of the convicted person's culpable conduct.[1782] In the Appeals Chamber's view, these are the trier of fact's essential obligations, which in turn inform the Appeals Chamber in its review of the Trial Chamber's Judgment and Sentence.[1783] The Appeals Chamber further holds that in determining matters of guilt and punishment, the trier of fact and the Appeals Chamber itself must be guided by the interest of justice[1784] and the rights of the accused,[1785] and avoid formulaic analysis[1786] that is not faithful to the whole of the circumstances and the facts of individual cases.[1787]

592. Even if, as the Prosecution submits, the Trial Chamber's findings satisfy the elements of ordering and instigating liability, this is because the elements of these forms of participation overlap with the elements of aiding and abetting and planning liability on the particular facts of this case. All four forms of criminal participation require the same culpable link between the accused's acts and the crime—substantial effect—and Taylor's acts and conduct had a substantial effect on the crimes, including his communicative acts, which ordering and instigating liability involve.[1788] Similarly, the Trial Chamber's finding that Taylor acted with knowledge of the criminal consequences of his acts and conduct[1789] is culpable *mens rea* for all four forms of liability.[1790]

593. However, in the Appeals Chamber's view ordering and instigating are inadequate characterisations of Taylor's culpable acts and conduct, as those forms of participation in fact fail to fully describe the Trial Chamber's findings. In addition to Taylor's communications with the RUF/AFRC leadership, the Trial Chamber found that Taylor provided arms and ammunition, operational support and military personnel to the RUF/AFRC that were critical in enabling the RUF/AFRC's Operational Strategy.[1791] Similarly, the Trial Chamber found that Taylor and Sam Bockarie planned an attack on Freetown and thereby had a substantial effect on the crimes committed during and after the Freetown Invasion. Both of them identified the targets, goals and *modus operandi* of the campaign.[1792] Finally, the Prosecution submissions regarding the *actus reus* of ordering and instigating liability exclude many of the Trial Chamber's findings regarding the sustained encouragement and moral support Taylor provided the RUF/AFRC leadership, including his encouragement to the RUF and AFRC to work together[1793] and his advice to Issa Sesay not to disarm.[1794]

594. The Appeals Chamber accordingly finds that aiding and abetting liability fully captures Taylor's numerous "interventions"[1795] over a sustained period of five years,[1796] the variety of assistance he provided to the RUF/AFRC leadership in the implementation of its Operational Strategy[1797] and the cumulative impact of his culpable acts and conduct[1798] on the "tremendous suffering caused by the commission of the crimes" for which he is guilty.[1799] Planning liability likewise fully captures Taylor's additional culpable acts and conduct for the crimes committed during

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the Freetown Invasion.[1800] These descriptions of Taylor's culpable acts and conduct fully reflect the Trial Chamber's findings on Taylor's authority and leadership role.[1801]

4. Conclusion

595. In light of the foregoing, the Appeals Chamber concludes that the Prosecution has failed to demonstrate an error occasioning a miscarriage of justice, and dismisses Prosecution Grounds 1 and 2 in their entirety.

IX. FAIR TRIAL RIGHTS AND THE JUDICIAL PROCESS

A. Fair Trial Rights

1. Introduction

596. In Grounds 36, 37 and 38, the Defence alleges that Taylor's "right to a fair and public trial"[1802] was breached in violation of the Statute and Rules of the Special Court. It claims that Taylor's fair trial rights were violated because the Trial Chamber: (i) was improperly constituted and lacked independence; (ii) failed to deliberate in reaching its judgment on his guilt; (iii) engaged in "irregularities" relating to the alternate judge; and (iv) failed to provide him with a public trial.

597. Proceedings before the Special Court are public in order to "protect litigants from the administration of justice in secret with no public scrutiny."[1803] This right and the right to a fair trial generally are protected by Article 17(2) of the Statute. Where, as here, a party on appeal alleges that his right to a fair trial has been infringed, that party must demonstrate that there was an error occasioning a miscarriage of justice and affecting the fairness of the proceedings.[1804]

2. Background

598. Article 12(1)(a) of the Statute provides that a Trial Chamber "shall be composed of . . . [t]hree judges." On 17 January 2005, Judges Teresa Doherty, Richard Lussick, and Julia Sebutinde were, in accordance with Article 12(1)(a), sworn in as the three Judges of Trial Chamber II. On 31 March 2006, the *Taylor* case was transferred to Trial Chamber II.[1805] On 18 May 2007, Judge El Hadji Malick Sow was designated as an Alternate Judge for the *Taylor* trial.[1806] The trial commenced before Trial Chamber II on 4 June 2007.[1807] Closing arguments before the same Trial Chamber commenced with the Prosecution's closing arguments on 8 and 9 February 2011, and concluded with the Defence's closing arguments and rebuttals on 9 to 11 March 2011.[1808] Two weeks before the Defence's closing arguments, Judge Sebutinde did not attend a scheduled hearing on an issue arising in the trial having to do with a disciplinary matter involving Counsel for the Defence. The hearing was adjourned due to Judge Sebutinde's absence.[1809]

599. Judge Sebutinde was elected by the UN Security Council to the International Court of Justice for a term beginning on 6 February 2012.[1810] On 1 March 2012, Trial Chamber II, consisting of the same Judges, issued an order scheduling a public hearing to deliver the Judgment.[1811] On 26 April 2012, as scheduled, the Judgment was pronounced in open court, by the Presiding Judge of Trial Chamber II and in the presence of the entire Trial Chamber. On 16 May 2012, Trial Chamber II convened a sentencing hearing,[1812] and thereafter, on 30 May 2012, the Chamber convened a hearing to announce the Sentence.[1813] A reasoned opinion was published in writing on 30 May 2012. On the same day, the Sentence was pronounced in a judgment in public and in the presence of the convicted person.[1814]

600. Pursuant to Rule 16*bis*(A), the Alternate Judge was present at each stage of the trial through to the 26 April 2012 pronouncement of the Judgment. For reasons announced by the Presiding Judge on 16 May 2012, Judge Sow was absent from the final two hearings held on 16 May and 30 May 2012.[1815]

601. After adjournment of the hearing on 26 April 2012, and after the three Judges of Trial Chamber II had left the bench, the Alternate Judge remained in the courtroom and made an oral statement. That statement was recorded and preserved, but not made part of the official transcript of the hearing, which ended with the Presiding Judge's pronouncement of adjournment. The statement was recorded by the official stenographer as follows:

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> The only moment where a Judge can express his opinion is during deliberations or in the courtroom, and pursuant to the Rules, where there is no ^ deliberations, the only place left for me in the courtroom. I won't get—because I think we have been sitting for too long but for me I have my dissenting opinion and I disagree with the findings and conclusions of the other Judges, because for me under any mode of liability, under any accepted standard of proof the guilt of the accused from the evidence provided in this trial is not proved beyond reasonable doubt by the Prosecution. And my only worry is that the whole system is not consistent with all the principles we know and love, and the system is not consistent with all the values of international criminal justice, and I'm afraid the whole system is under grave danger of just losing all credibility, and I'm afraid this whole thing is headed for failure. Thank you for your attention.[1816]

3. Submissions of the Parties

602. The Defence alleges that there were several "irregularities" starting on 25 February 2011, and during the period between 6 February and 30 May 2012, that deprived Taylor of a fair and public trial. It asserts that irregularities related to the Alternate Judge, the content of the Alternate Judge's statement and Judge Sebutinde's simultaneous membership of the ICJ for the last 16 weeks of the trial proceedings deprived Taylor of his fair trial rights. In particular, the Defence claims, relying in part on the statement of the Alternate Judge, that the Chamber: (i) improperly adjourned the hearing of 25 February 2011, instead of appointing the Alternate Judge in Judge Sebutinde's absence on that day; (ii) failed to provide Taylor with a properly constituted and independent Trial Chamber; and (iii) failed to deliberate before finding Taylor guilty and otherwise subjected him to "the most serious breaches of principles and values of international criminal law."[1817]

(a) Alleged Lack of Deliberations

603. The Defence, in Ground 36, submits that in violation of Rule 87, "deliberations . . . were not undertaken by the Trial Chamber in this case."[1818] It maintains that the Alternate Judge's statement "suggests that the Chamber failed to properly conduct the process of deliberations under the Rules, that is, to attend all deliberations together, consider the guilt of Taylor beyond reasonable doubt with reference to the totality of the trial record and to decide upon this issue by voting on each count of the Indictment."[1819]

604. The Prosecution responds that the quoted statement of the Alternate Judge is ambiguous and incomplete, as there is a word missing between the words "no" and "deliberation."[1820] It asserts that the Defence submissions fail "to show that the deliberative process was compromised in any way,"[1821] and that Rule 87 "mandates neither the manner nor means of deliberation following closing arguments."[1822] It further contends that the Alternate Judge's "[s]tatement . . . [is not] sufficient to rebut the presumption"[1823] "that a judge acts in accordance with his or her solemn declaration."[1824] It argues that: (i) the length of the Judgment;[1825] (ii) the time it took to deliver the Judgment;[1826] (iii) the "detailed analysis of the law [and] evidence"[1827] in the Judgment; and (iv) the rejection of "three modes of liability"[1828] concerning Taylor "attests to the care, with which the Trial Chamber considered this case."[1829]

(b) Alleged "Irregularities" relating to the Alternate Judge

605. In Ground 37, the Defence submits that the trial process suffered from a "number of serious procedural irregularities,"[1830] which resulted in Taylor being denied a "fair and public trial."[1831] In particular, the Defence submits that on 25 February 2011,[1832] Judge Sebutinde refused to attend proceedings.[1833] It argues that this "irregularity" was compounded by the Presiding Judge's decision to adjourn proceedings rather than allow the Alternate Judge to replace Judge Sebutinde pursuant to Article 12(4) of the Statute and Rule 16(B) of the Rules.[1834] The Defence further submits that the statement made by the Alternate Judge on 26 April 2012, following the oral pronouncement of the Judgment, was "removed" from the official transcript when it "should have been included on the public record,"[1835] and that the Trial Chamber unjustifiably "remov[ed] . . . the Alternate Judge's name from the transcripts, orders and judgment cover pages from the date he made his Statement on 26 April 2012."[1836] The Defence further avers that the statement by the Alternate Judge "establishes the most serious breaches of principles and values of international criminal law."[1837]

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606. The Prosecution responds that "[n]one of the alleged irregularities, even if correctly characterised, resulted in a denial of a fair trial" to Taylor.[1838] Specifically, it submits that the hearing on 25 February 2011 was effectively a disciplinary procedure concerning Counsel for the Defence, and no substantive decision was taken on any matter prejudicial to Taylor.[1839] It also submits that the Alternate Judge's personal comments on 26 April 2012 were not part of the official record.[1840] With respect to the absence of the Alternate Judge's name from court documents, the Prosecution responds that the Defence submissions are unfounded since the omission resulted from a decision of the Plenary of Judges, which made a finding of misconduct and directed that the Alternate Judge "refrain from further sitting in the proceedings."[1841] It also rejects the Defence submission regarding the content of the statement made by the Alternate Judge, arguing that the language of the statement demonstrates a "strong disagreement with the unanimous findings and disposition of the Trial Chamber, [rather than] . . . any impropriety on the part of the Trial Chamber."[1842]

(c) Constitution and Independence of the Trial Chamber

607. In Ground 38, the Defence submits that "for a significant" and "critical" period of the trial, Judge Sebutinde was "contemporaneously both a Judge of the SCSL . . . and a Judge of the ICJ."[1843] That fact, it submits, establishes that "the Trial Chamber was irregularly constituted," and that Judge Sebutinde's independence was compromised.[1844] Relying on examples from the ICTY[1845] and ICTR,[1846] the Defence contends that Judge Sebutinde was required to give a series of undertakings to the Plenary of the Special Court following her appointment to the ICJ.[1847] In particular, it argues that Judge Sebutinde was required to undertake that she would "fulfil her judicial obligations at the SCSL . . . conscientiously, to the exclusion of other outside activities."[1848] It further suggests that Judge Sebutinde was required to notify the Parties of her appointment,[1849] and that she "ought to have sought authorisation for her contemporaneous appointment" from the UN Secretary-General.[1850]

608. The Prosecution responds that the Defence "fails to rebut the strong presumption that Judge Sebutinde acted in accordance with [her] solemn declaration [to act conscientiously pursuant to Rule 14]."[1851] It submits that Judge Sebutinde's appointment to the ICJ is judicial in nature and presents no conflict of interest.[1852] It also submits that there is "no legal prohibition to Judge Sebutinde serving simultaneously as a judge of the ICJ and SCSL,"[1853] and that, contrary to the Defence submissions, "she was a judge of both courts for a relatively short period of time."[1854]

4. Discussion

(a) Public Trial

609. The *Taylor* trial commenced on 4 June 2007, in the public courtroom of the ICC.[1855] On 17 May 2010, proceedings were moved to the public courtroom of the STL. Trial proceedings ended with closing arguments on 11 March 2011.[1856] The procedural history shows that all trial proceedings in this case were held in public, in accordance with Article 17(2) of the Statute, with the exception of those proceedings where appropriate measures were taken in order to protect victims and witnesses.[1857] The proceedings were also broadcast via a live-stream on the Special Court's website.[1858]

610. On 1 March 2012, Trial Chamber II, in accordance with Rule 88(A), published an order scheduling a public hearing to deliver the Judgment in The Hague.[1859] On 26 April 2012, in accordance with Rule 78, the Presiding Judge of Trial Chamber II, Judge Richard Lussick, delivered orally and in the public courtroom the "Trial Chamber['s] unanimous. . .] find[ings]" and Judgment in this case.[1860]

611. These incontrovertible facts establish that Taylor was provided a public trial in accordance with Article 17(2) of the Statute. The Defence submissions do not relate to the fundamental guarantees of a public trial and are accordingly without merit.

(b) Alleged "Irregularities" relating to the Alternate Judge

612. Article 12(1)(a) provides that a trial chamber "shall be composed of . . . [t]hree judges." Article 12(4) of the Statute provides for the possibility of an alternate judge to be designated to a trial and to "be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting." Rule 16(B) provides that an

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alternate judge may be designated to replace a voting member of a trial chamber only where that voting member is unable to sit "for a period which is or is likely to be longer than five days." Article 12 and Rule 16 serve as a contingency mechanism to ensure that trial proceedings are not disrupted in the event that a judge of a trial chamber is unable to complete the trial. The plain language of these provisions establishes that an alternate judge does not form part of a trial chamber, unless and until he is designated by the presiding judge to replace one of the judges appointed to that chamber.

613. Rule 16*bis* further delineates the responsibilities of the alternate judge. The alternate judge is required to be present at each stage of the trial and during the deliberations.[1861] However, an alternate judge is "not . . . entitled to vote" during deliberations and is limited in his courtroom remarks to posing "*questions* which are necessary for the alternate judge's understanding of the trial . . . proceedings."[1862] This limitation is further restricted by the requirement that the questions be posed "through the Presiding Judge of the Trial Chamber."[1863]

(i) Content of the Alternate Judge's Statement

614. The Defence alleges that the content of the statement made by the Alternate Judge shows that Taylor was deprived of his right to a fair trial because no deliberations were conducted by the Trial Chamber prior to the delivery of the Judgment, and because the Trial Chamber committed "the most serious breaches of principles and values of international criminal law."[1864]

615. Rule 87 of the Rules, entitled "Deliberations" provides in the relevant part:

> (A) After presentation of closing arguments, the Presiding Judge shall declare the hearing closed, and the Trial Chamber shall deliberate in private. A finding of guilty may be reached only when a majority of the Trial Chamber is satisfied that guilt has been proved beyond reasonable doubt.
>
> (B) The Trial Chamber shall vote separately on each count contained in the indictment.

616. Rule 87(A), (B) require the trial chamber to: (i) deliberate only after the conclusion of the trial;[1865] (ii) vote separately on each count contained in the indictment; and (iii) not enter a conviction unless two of the three voting members are satisfied of guilt beyond a reasonable doubt.

617. The Defence does not allege that deliberations in this case began before the conclusion of the trial. Similarly, it does not specifically allege that the Trial Chamber entered a conviction absent a majority vote by the three voting members, nor does it specifically assert that the Trial Chamber did not vote separately on each count contained in the Indictment. Its assertion that the Trial Chamber did not deliberate can only be understood as challenging the process by which the Trial Chamber deliberated and voted.

618. A claim that there are improprieties in the deliberative process must be supported by concrete evidence; general allegations are insufficient.[1866]

619. The deliberative *process* may vary from chamber to chamber, and from court to court. In recognition of this fact, Rule 87 does not specifically prescribe the process by which deliberations are to be conducted by a chamber. Rather, each chamber may determine the most appropriate approach, using any combination of means, so long as the chamber complies with its substantive obligations under the Rules, particularly the imperatives that the deliberations must be private[1867] and must remain secret.[1868] Deliberative practices in which different chambers engage may include, for example, circulation of memoranda and drafts for written comment, written voting, in-person conferencing and remote video or telephonic-conferencing. In this regard, the Agreement of the SCSL specifically foresees that deliberations may be conducted remotely,[1869] thus further confirming that Rule 87 does not require physical presence in deliberations.

620. While the deliberation process is private and secret in order to ensure judicial independence, the obligations imposed by Rule 87 are transparent and the outcome of the deliberative process is public and open. The Judgment, pronounced in public and set forth in writing pursuant to Article 18 of the Statute and Rule 88, would show whether or not the Trial Chamber deliberated Taylor's guilt beyond a reasonable doubt and voted for separate convictions as to each count. The Judgment accordingly speaks for itself.

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621. The Judgment discusses in detail the facts and evidence the Trial Chamber considered in reaching its conclusions.[1870] It reasons how the Trial Chamber evaluated evidence, how it came to its conclusion of guilt beyond a reasonable doubt for aiding and abetting and planning liability and how the evidence failed to meet the reasonable doubt standard for joint criminal enterprise, ordering and superior responsibility liability which the Trial Chamber rejected. The Judgment not only unequivocally demonstrates that there were deliberations, but expressly records the outcome of those deliberations, using the sub-title "Deliberations" in each section in which it explains its reasoning on each of the several allegations and responses put forward by the Parties.[1871] The Judgment, accordingly, attests to the deliberative process and compliance with Rule 87.

622. Of equal importance, the transparency of the Judgment allows the Parties to analyse the decisions and reasoning of the Trial Chamber in the deliberative process in order for them to exercise freely their right to raise on appeal any errors of law or fact on which the Trial Chamber's ultimate decisions were based.[1872]

623. The Judgment further unequivocally demonstrates that all of the voting members of Trial Chamber II agreed with all of the reasoning and conclusions expressed in the Judgment.[1873] It unambiguously recites each of the eleven Counts *individually and separately* to which each of the three voting judges attested they had found Taylor guilty beyond a reasonable doubt.

624. Rule 88(C) read together with Rule 16*bis*(C)[1874] establishes that the obligation to reach a judgment is exclusively entrusted to the three voting trial chamber Judges. The alternate judge was neither entitled to vote nor to render an opinion.

625. In light of the Judgment itself, and having considered the Parties' submissions, the Appeals Chamber concludes that the Trial Chamber properly deliberated in accordance with Rule 87. The Alternate Judge's statement does not demonstrate otherwise, as the Defence has taken a few words out of context. The Alternate Judge clearly stated the purpose of his statement: "I have my dissenting opinion and I disagree with the findings and conclusions of the other Judges." To the extent that the Alternate Judge considered that he had a right, as an Alternate Judge, to present his personal views "in the courtroom" or render a dissenting opinion, he was simply incorrect and in violation of the Statute and Rules of this Court, and the Appeals Chamber holds accordingly. While the fact that the Alternate Judge made the statement and the manner of its delivery were irregular and *ultra vires*, the statement has in no way prejudiced Taylor's rights.

626. The content of the Alternate Judge's statement forms part of the record and has been extensively relied on by the Defence. The Appeals Chamber does not adjudicate between the Trial Chamber and the personal views of the Alternate Judge. The Defence has tested the assertions made in the Alternate Judge's statement by the appellate process, which it has invoked and through which it challenges the Trial Judgment as to the evidence, law and procedure and as to the sufficiency of the evidence and reasoning supporting the Trial Chamber's conclusions. It is exclusively and solely the task of the Appeals Chamber to determine whether or not the Trial Chamber *was* in error in concluding that the guilt of Taylor was proven beyond a reasonable doubt, taking into account the entire record, the process, and all of the arguments raised on appeal by the Parties.

(ii) Alleged Procedural "Irregularities" regarding the Alternate Judge

627. The Defence submits that Taylor was denied the right to a fair trial insofar as there were certain alleged procedural irregularities in the trial proceedings: (i) the failure to designate the Alternate Judge to take the place of an absent member of Trial Chamber II on 25 February 2011; (ii) the "removal" from the official transcript of the hearing held on 26 April 2012 of the statement of the Alternate Judge; and (iii) the "removal" of the Alternate Judge's name from the cover pages of the written Judgment, Sentencing Judgment, and transcripts of the Sentencing Hearing (16 May 2012) and the hearing for the pronouncement of the Sentence (30 May 2012).

a. The 25 February 2011 Hearing

628. An alternate judge does not "stand in" for an absent judge, but rather, if designated under Rule 16, permanently replaces the original judge of the chamber for the remainder of the proceedings. Rule 16 states that the decision to designate an alternate judge to replace a sitting judge is within the discretion of the presiding judge,

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and that the discretion may only be exercised "[i]f [a] judge is, for any reason, unable to continue sitting in a proceeding, trial, or appeal which has partly been heard for a period which is or is likely to be longer than five days."

629. Judge Sebutinde's absence from one hearing after four years of trial proceedings did not render her "unable to sit" in the remainder of the trial and did not trigger the discretion of the Presiding Judge to designate an alternate judge to permanently take her place in that trial. The Presiding Judge rightly considered Judge Sebutinde's temporary absence as a scheduling matter, rather than an issue under Rule 16. The Defence fails to show any prejudice to Taylor by the adjournment of that hearing, which did not relate to matters concerning Taylor's innocence or guilt.

b. The Official Transcript of the 26 April 2012 Hearing

630. The Appeals Chamber reiterates and confirms its previous public ruling:

> The hearing of 26 April 2012 officially concluded when it was adjourned by the Presiding Judge of Trial Chamber II. The official transcript accordingly ends with that adjournment, and could not have included further statements made after the hearing was officially closed. On 16 May 2012, the Presiding Judge described for the record Justice Sow's behaviour following the adjournment. The Plenary Resolution regarding Justice Sow's behaviour was further entered into the official record. The Defence is fully aware of the content of Justice Sow's statement. There is no basis to suggest that the official transcript is anything but accurate and transparent.[1875]

631. The Defence argues that in the interests of justice, the Alternate Judge's statement should have been included in the official transcript notwithstanding that the hearing was officially adjourned and the three voting Judges had exited the courtroom before the statement was made.[1876] Given that the Parties and the public are fully aware of the content of the Alternate Judge's statement and that it forms part of the public record, this submission is moot.[1877] However, the Defence further characterises the matter as the "removal" of the statement from the official record and the "public silenc[ing]" of the Alternate Judge.[1878] The Defence has, by insinuation, impugned the integrity of the Special Court and suggested that this Court intended to hide matters from the public, although the Defence knows that the Trial Chamber publicly acknowledged the statement of the Alternate Judge, and that the Appeals Chamber made the statement a part of its public record from the outset of the Appeal[1879] and accepted it as evidence for the Appeal.[1880] The Defence submissions on this issue are not only without merit, but also frivolous and vexatious.

c. The Cover Pages of Judgments and Transcripts

632. Neither the Statute nor the Rules speak to this issue, and accordingly the inclusion of an alternate judge's name on the cover pages of documents is not mandatory. However, the Appeals Chamber notes the practice of this Court to include on the cover pages the names of all judges, including alternate judges, who participated in the case. The Appeals Chamber finds no reason to depart from this practice. The Appeals Chamber, however, fails to see the prejudice to Taylor by the omission of the name of the Alternate Judge on the cover page. For the sake of consistency in the Court's practice, the Appeals Chamber would direct the Registrar to amend the cover pages of the Judgment and Sentencing Judgment by including the name of the Alternate Judge El Hadji Malick Sow. The omission of the Alternate Judge's name from the transcript of the two hearings which he did not attend is both accurate and non-prejudicial.

(c) Constitution of the Trial Chamber

633. The Defence claims that Taylor was deprived of a properly constituted Trial Chamber because of Judge Sebutinde's membership in the ICJ. The Statute and the Agreement are the Special Court's constitutive documents. Article 2 of the Agreement and Articles 11, 12 and 13 of the Statute dictate the organisation of the Special Court, the composition of the Chambers and the means by which officers and members of the Chambers are selected. There is no allegation that the composition of the Chamber failed in any way to comply with these mandates. The Agreement, the Statute and the Rules do not suggest that the appointment of Judge Sebutinde to another international tribunal (with non-conflicting jurisdiction) impacts on the composition of the Special Court Trial Chamber on which

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she continued to sit. The Appeals Chamber holds that Trial Chamber II was properly constituted at all times during Taylor's trial.

(d) Judicial Independence

634. Ground 38 purports to relate to the proper constitution of the Trial Chamber, yet the Defence submissions do not address that issue and no law is cited in respect of that issue. Rather, the Defence submissions under Ground 38 only concern judicial independence.

635. It is extremely serious to allege that a judge is not acting, or may not be able to act, independently in his judicial role, that he is subject to external authority or that his freedom in decision-making has been compromised by external forces. Such allegations should not be made without "ascertainable facts and firm evidence," as the Defence has done here.[1881] The Defence contention that Justice Sebutinde's judicial independence was compromised solely because she was appointed to the ICJ is unsupported, disingenuous and ridiculous. The Appeals Chamber dismisses it.

5. Conclusion

636. The Defence chose not to raise these issues before the Trial Chamber. The Appeals Chamber, the Defence, the Prosecution and the public were accordingly deprived of the Trial Chamber's view of the matters raised in these Grounds. This is why the requirement to first raise issues at trial is not a mere formality. Without the Trial Chamber's ruling on matters within its authority and knowledge, innuendo and speculation may supplant facts and legal reasoning. Although the failure to raise issues at the trial level may be a complete bar to consideration on appeal,[1882] in the interest of justice, the Appeals Chamber has nonetheless considered the Defence submissions, which, on inspection, have proved to be without merit.

637. The Defence has failed to show that any of its allegations in Grounds 36, 37 and 38 amount to a violation of any provision of the Statute and/or the Rules or that any of the facts alleged caused Taylor prejudice. Nothing raised amounts to an "error occasioning a miscarriage of justice and affecting the fairness of the proceedings."[1883] These Grounds are therefore dismissed in their entirety.

B. Judicial Process

1. The Trial Chamber's Findings

638. On 28 January 2011, the Trial Chamber[1884] denied the Defence motion requesting an order for disclosure or an investigation under Rule 54.[1885] The motion was prompted by newspaper reports allegedly quoting two diplomatic cables generated by the United States Government which, if true, established: first, that high government officials of the United States and another country had discussed alternative avenues for prosecution of Taylor in the event he was not convicted by the Special Court; and second, that unnamed persons associated with the Registry, Prosecutor's Office and Chambers of the Special Court were talking to persons outside the Court, including employees of the United States Government, about delays in Taylor's trial and their expectation of the time when the trial would be concluded.[1886] The Defence motion sought disclosure or investigation into the identity of the unnamed Court sources of information, the nature of the sources' relationship with the United States Government, information tending to suggest that the Office of the Prosecutor had sought or received instructions from the United States Government and an explanation of funds, if any, provided by the United States Government to the Office of the Prosecutor.[1887]

639. The Trial Chamber reasoned that the first cable "does not indicate that the US government has any influence over any organs of the Court," noting that the point of the discussion referred to in the cable was that the two governments had no idea whether Taylor would be convicted or acquitted, and therefore that cable demonstrates that "it is clear that [the United States Government] does not have any influence over the final outcome of the trial."[1888] The Trial Chamber further reasoned in respect to the second cable that "while the statements attributed to the sources within the Prosecution, Registry and Chambers . . . indicate that information may have been provided to the US government by employees within the Court, the statements do not demonstrate that such sources were receiving

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instructions" from the United States Government.[1889] It concluded that "the Defence has not shown any *prima facie* evidence that there has been interference with the independence and impartiality of the Court, and therefore has shown no evidentiary basis for either disclosure by, or an investigation of, any organ of the Court."[1890]

2. Submissions of the Parties

640. The Defence asserts that the Trial Chamber erred in law, fact and/or procedure in the Decision on Defence Rule 54 Motion.[1891] It submits that the Trial Chamber erred in law in requiring that the Defence makes a *prima facie* showing that there "has been" interference with the independence and impartiality of the Court, arguing that it was only required to make a *prima facie* showing that there "may have been" such interference.[1892] It further submits that the Trial Chamber erred in fact and/or procedure in its assessment of the evidence in support of the Defence motion.[1893]

641. The Prosecution responds that the Trial Chamber properly exercised its discretion, applied the correct legal standard and correctly assessed the evidence.[1894] It notes the high presumption of independence and impartiality of the organs of the Court, and that Rule 54 orders must be necessary for the purposes of an investigation. It submits that the Trial Chamber properly considered whether there was a *prima facie* case that there had been a breach of independence or of bias or the appearance of bias.[1895] It further submits that the Trial Chamber properly considered that the evidence put forward by the Defence did not establish the requisite *prima facie* showing, as the evidence "relates to a one way flow of information regarding the status of the proceedings in a case before the Court, a matter within the purview of the Management Committee, given to a State member of that Committee."[1896]

642. The Defence replies that the Prosecution does not respond to its submissions, as the Defence "did not contend that Article 15 was actually violated."[1897] Rather, it submits that it argued that the evidence "described inappropriate communications giving reason to believe that such instructions *may have been* sought or received."[1898]

3. Discussion

643. It is not the case of the Defence that actual interference with the independence and impartiality of the Court occurred.[1899] Rather, the Defence adopts an approach that would require pure speculation by merely submitting that there *may have been* interference.

644. The Appeals Chamber cannot accept such an approach as the basis for invoking an investigation under Rule 54, as it would allow speculation and mere conjecture to justify the employment of the Court's full criminal powers. An order for a judicial inquiry requested under Rule 54 is exceptional and cannot be used as a "fishing expedition" by either party.[1900] Accordingly, the Appeals Chamber concludes that the Trial Chamber did not err in denying the Defence motion.

4. Conclusion

645. Defence Ground 39 is dismissed in its entirety.

X. THE SENTENCE

646. The Trial Chamber sentenced Taylor to a single term of imprisonment of fifty (50) years for all the Counts on which he was found guilty.[1901] Both Parties challenge the Sentence.

647. In Ground 42, the Defence complains that the Trial Chamber imposed a "manifestly unreasonable" sentence in the circumstances of this case.[1902] Under this heading, it puts forward six disparate arguments concerning the law applied by the Trial Chamber and the circumstances the Trial Chamber considered as mitigating and aggravating factors.[1903] In Ground 43, the Defence complains that the Trial Chamber erred in law by "noting" Sierra Leonean sentencing practices. In Ground 44, the Defence complains that the Trial Chamber erred in law in giving weight to aggravating factors not argued by the Prosecution in its submissions. In Ground 45, the Defence complains that the Trial Chamber erred in failing to consider Taylor's expressions of sympathy and compassion as a mitigating factor.

648. In its Ground 4, the Prosecution complains that the sentence imposed by the Trial Chamber fails to adequately reflect the totality of Taylor's "criminal conduct and overall culpability."[1904] It puts forward three lines of

argument. The Prosecution argues that the Trial Chamber erred in law in holding that aiding and abetting liability generally warrants a lesser sentence than other forms of criminal participation, rather than considering the gravity of Taylor's actual criminal conduct. It also complains that the Trial Chamber failed to properly assess the totality of Taylor's criminal conduct. Finally, it contends that the Trial Chamber failed to give sufficient weight to Taylor's planning conviction for the crimes committed in the Freetown Invasion.

649. The Appeals Chamber will first address the Parties' submissions regarding the law applied by the Trial Chamber in determining the sentence, and will then consider the Parties' challenges to the Trial Chamber's analysis and the Sentence imposed.

A. The Law of Sentencing

1. The Trial Chamber's Findings

650. The Trial Chamber held that "Article 19 of the Statute and Rule 101(B) require the Trial Chamber to take into account certain factors in determining an appropriate sentence. These include the gravity of the offence, the individual circumstances of the convicted person, any aggravating and mitigating factors, and where appropriate the general practice regarding prison sentences of the ICTR and the national courts of Sierra Leone."[1905]

651. The Trial Chamber noted that it considered the gravity of the offence to be the "litmus test" for sentencing, and that the gravity of the offence is determined by assessing the inherent gravity of the crime and the criminal conduct of the convicted person.[1906] It noted factors it took into account in determining the gravity of the offence.[1907] It further held:

> With respect to the assessment of the criminal conduct of the convicted person, the Trial Chamber has taken into account the mode of liability under which the Accused was convicted, as well as the nature and degree of his participation in the offence. In this regard, the Trial Chamber adopts the jurisprudence of the ICTY and ICTR that aiding and abetting as a mode of liability generally warrants a lesser sentence than that to be imposed for more direct forms of participation.[1908]

652. In reasoning the sentence imposed, the Trial Chamber stated:

> Mr. Taylor was found not guilty of participation in a joint criminal enterprise, and not guilty of superior responsibility for the crimes committed. A conviction on these principal or significant modes of liability might have justified the sentence of 80 years' imprisonment proposed by the Prosecution. However, the Trial Chamber considers that a sentence of 80 years would be excessive for the modes of liability on which Mr. Taylor has been convicted, taking into account the limited scope of his conviction for planning the attacks on Kono and Makeni in December 1998 and the invasion of and retreat from Freetown between December 1998 and February 1999.[1909]
>
> [Al]though the law of Sierra Leone provides for the sentencing of an accessory to a crime on the same basis as a principal, the jurisprudence of this Court, as well as the ICTY and ICTR, holds that aiding and abetting as a mode of liability generally warrants a lesser sentence than that imposed for more direct forms of participation. While generally, the application of this principle would indicate a sentence in this case that is lower than the sentences that have been imposed on the principal perpetrators who have been tried and convicted by this Court, the Trial Chamber considers that the special status of Mr. Taylor as a Head of State puts him in a different category of offenders for the purpose of sentencing.[1910]
>
> Although Mr. Taylor has been convicted of planning as well as aiding and abetting, his conviction for planning is limited in scope. However, Mr. Taylor was functioning in his own country at the highest level of leadership, which puts him in a class of his own when compared to the principal perpetrators who have been convicted by this Court.[1911]

2. Submissions of the Parties

(a) Prosecution Appeal

653. The Prosecution contends, in its Ground 4, that the Trial Chamber erred in law in holding that aiding and abetting is a "lesser" form of criminal participation "generally warrant[ing] a lesser sentence than that to be imposed

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for more direct forms of participation."[1912] It argues that neither the Statute nor customary international law establishes a hierarchy of gravity for the forms of criminal participation under Article 6(1) of the Statute.[1913]

654. In support of its submissions, the Prosecution submits that the Statute, Rules and jurisprudence of this Court establish that a just and appropriate sentence is determined based on the "totality principle", which requires that "a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of participation of the accused."[1914] It argues that this assessment is not based on the "category or legal characterisation of the crimes."[1915] The Prosecution further contends that the plain language of Article 6(1) of the Statute demonstrates that there is no hierarchy of gravity in the forms of criminal participation.[1916] It argues that depending on the individual circumstances of the case, a person responsible for planning or aiding and abetting crimes might justifiably attract a greater sentence than a direct perpetrator.[1917]

655. The Prosecution further submits that customary international law, like the Statute, Rules and jurisprudence of this Court, establishes that "sentences must be based on the gravity of the offences and the totality of the criminal conduct of the accused" in light of the facts and circumstances of each specific case.[1918] It further argues that customary international law does not establish a hierarchy of gravity for forms of participation.[1919] It notes that domestic practice for domestic crimes differs in relation to the punishment of principals and accessories, and that the domestic law of both Sierra Leone and England, as well as many other jurisdictions, "provide for sentencing an accessory to a crime on the same basis as a principal."[1920]

656. The Prosecution also submits that the Trial Chamber erred in relying on ICTY and ICTR caselaw to conclude that aiding and abetting generally warrants a lower sentence than other forms of criminal participation in Article 6(1) of the Statute. It argues that this jurisprudence is distinguishable, as it addresses low-level aiders and abettors.[1921] Further, it contends that the ICTY Appeals Chamber's approach to aiding and abetting in *Vasiljević* only represents the sentencing practice for that Court based on selected domestic jurisdictions, and is not a statement of customary international law.[1922]

657. The Defence responds that contrary to the Prosecution submissions, the Trial Chamber's holding that it "adopts the jurisprudence of the ICTY and ICTR that aiding and abetting as a mode of liability generally warrants a lesser sentence than that to be imposed for more direct forms of participation" is clear, unambiguous and correct.[1923] While the Defence agrees with the Prosecution that there is no rule of customary international law establishing that certain forms of liability are more or less serious than others for sentencing or other purposes,[1924] it contends that the Trial Chamber properly held that there is a general principle of law that aiding and abetting generally warrants a lesser sentence.[1925] In support of its contentions, the Defence relies on the jurisprudence of the ICTY and ICTR and cites the *Krnojelac, Kajelijeli, Vasiljević, Krstić, Kvočka, Muhimana, Semanza, Bisengimana, Orić, Simić, Nchamihigo* and *Šljivančanin* cases. It submits that contrary to the Prosecution's argument, the general principle articulated by the Trial Chamber does not only apply to "low level aiders and abettors" but also to "higher level defendants."[1926] In particular, it cites the *Krstić* Appeal Judgment as an example that the general principle that aiding and abetting generally warrants a lesser sentence applies to a person in a leadership role as well.[1927]

658. The Prosecution replies that there is no general principle of law establishing a hierarchy of gravity for the forms of criminal participation in Article 6(1).[1928] It submits that the only general principle is that sentences must be individualised and determined on a case-by-case basis.[1929]

(b) Defence Appeal

659. The Defence submits, in Ground 43, that the Trial Chamber erred in law when it noted Sierra Leonean law on sentencing, as Taylor was not convicted of any offences under Article 5 of the Statute.[1930] It contends that Article 19(1) of the Statute, as interpreted in this Court's jurisprudence, provides that "a Trial Chamber is to have recourse to the national courts in Sierra Leone only for convictions under Sierra Leone law contained in Article 5 of the Statute."[1931]

660. The Prosecution responds that, contrary to the Defence submission, the Trial Chamber only noted Sierra Leonean law; it did not apply Sierra Leonean sentencing practice.[1932] It further submits that the Trial Chamber

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"noted Sierra Leonean law on [the form of criminal participation] which is a separate and distinct issue to offences."[1933]

3. Discussion

661. The Appeals Chamber has earlier in this Judgment discussed the object and purpose of the Statute and recalls its conclusions regarding Article 6(1).[1934] With respect to the law of sentencing, Article 19(2) of the Statute provides that, in imposing the sentence upon a convicted person, the Trial Chamber "should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person." Article 19 further provides that the Trial Chamber should, as appropriate, also have recourse to the sentencing practices of the ICTR and the national courts of Sierra Leone. Rule 101(B) provides that, in applying Article 19(2) of the Statute, the Trial Chamber shall take into account aggravating and mitigating circumstances when determining the appropriate sentence. The Statute does not establish minimum or maximum sentences of imprisonment in any respect.

662. Applying the Statute and the Rules, the Appeals Chamber has held that sentences must be determined in accordance with the "totality principle":

> *A Trial Chamber must ultimately impose a sentence that reflects the totality of the convicted person's culpable conduct*. This principle, the totality principle, requires that a sentence must reflect the inherent gravity of the totality of the criminal conduct of the accused, giving due consideration to the particular circumstances of the case and to the form and degree of the participation of the accused in the crimes.[1935]

The "totality principle" embodies and gives effect to the mandate of the Court, the object and purpose of the Statute, principles of individual criminal liability and the rights of the accused, as established in the Statute and Rules.

663. The Statute provides for the prosecution and punishment of persons who bear the greatest responsibility and establishes individual criminal liability under Articles 6(1) and 6(3). If the accused's *guilt* under Article 6 is proved beyond a reasonable doubt for a crime in Articles 2–5 of the Statute and charged in the Indictment, the Trial Chamber must then determine the appropriate sentence reflecting "the inherent gravity of the totality of the convicted person's culpable conduct." Consistent with the object and purpose of the Statute, the Appeals Chamber has held that the paramount consideration in sentencing at the Special Court is to impose sentences that reflect the revulsion of mankind, represented by the international community, to the crime and the convicted person's participation in the crime.[1936]

664. As expressed in the totality principle, Article 19(2) and Rule 101(B) establish that in determining an appropriate sentence, the Trial Chamber must consider and weigh all relevant facts,[1937] including the gravity of the offence, the convicted person's criminal conduct and the convicted person's individual circumstances.[1938] This is in accordance with principles of individual criminal liability as established in the Statute and Rules.[1939] An appropriate sentence should reflect the gravity of the crime and its effects, and should also be individualised so as to hold a convicted person responsible for what he himself has done or failed to do.[1940] It should be a sentence that reflects the gravity of the totality of the *convicted person's* culpable conduct and the individual circumstances of the *convicted person*.[1941] The gravity of the totality of the convicted person's culpable conduct, including "the form and degree of the participation of the accused in the crimes," must be determined by the particular circumstances of the case: the actual conduct, role and mental state of the convicted person as proved beyond a reasonable doubt.

665. The Appeals Chamber recalls that in determining matters of guilt and punishment, the Trial Chamber and the Appeals Chamber must be guided by the interest of justice and the rights of the accused, and avoid formulaic analysis that is not faithful to the whole of the circumstances and the facts of individual cases.[1942] Trial Chambers have wide discretion as to the particular methodology they adopt.[1943] What is critical is that the Trial Chamber considered all facts relevant to determining the gravity of the offence and the totality of the convicted person's culpable conduct, and did not allow the same factor to detrimentally influence the convicted person's sentence twice.[1944]

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666. In the Appeals Chamber's view, the Trial Chamber's holding that aiding and abetting generally warrants a lesser sentence than other forms of participation is not consistent with the Statute, the Rules and this Appeals Chamber's holdings.[1945] First, the plain language of Article 6(1) of the Statute clearly does not refer to or establish a hierarchy of any kind.[1946] Second, a hierarchy of gravity among forms of criminal participation in Article 6(1) is contrary to the essential requirement of individualisation that derives from the mandate of the Court, principles of individual criminal liability and the rights of the accused. Presumptions regarding the gravity of forms of participation in the *abstract* preclude an individualised assessment of the convicted person's *actual conduct* and may result in an unjust sentence that may be either overly punitive or overly lenient. Third, the totality principle requires an individualised assessment of the total gravity of the convicted person's conduct and individual circumstances. A *general* presumption for sentencing purposes expressed in terms of forms of participation is thus both unnecessary and unhelpful: unnecessary because the totality principle already provides that the sentence must reflect the gravity of the convicted person's actual conduct; and unhelpful because it either improperly directs the trier of fact's attention to forms of participation in the abstract rather than actual conduct, or is a vague and extraneous statement devoid of legal meaning.

667. The Appeals Chamber has considered the ICTY/ICTR jurisprudence cited by the Defence and adopted by the Trial Chamber,[1947] which is based on the holding of the ICTY Appeals Chamber in *Vasiljević*.[1948] This Appeals Chamber does not consider that holding persuasive. A number of the national laws relied on in the *Vasiljević* Appeal Judgment do not support the principle that aiding and abetting *as a form of criminal participation* warrants a lesser punishment, but only establish that an accused's minor participation in the commission of the crime may be a mitigating circumstance.[1949] For example, United States federal criminal law specifically provides that "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."[1950] Likewise, the Austrian Penal Code is consistent with the approach that the sentence is determined based on the accused's individual conduct, not the form of participation.[1951] Similar provisions can be found in a number of other civil law jurisdictions, including Brazil,[1952] Costa Rica,[1953] Puerto Rico,[1954] France[1955] and Italy.[1956] It is unclear from its reasoning whether the ICTY Appeals Chamber presumed that aiding and abetting liability constitutes minor participation in the commission of a crime, or if its holding was only limited to the facts of the case before it and was not a statement of general principle. This Appeals Chamber notes that the *Vasiljević* Appeals Chamber did not declare its holding reflective of customary international law, nor did it pronounce it a general principle of law.

668. The Appeals Chamber notes that Sierra Leonean law provides that there is no distinction between principal and accessory liability for sentencing purposes.[1957] The Defence submits that the Trial Chamber erred in referring to this law. The Appeals Chamber observes that the Trial Chamber only noted this law and did not apply it. The Appeals Chamber, moreover, does not agree that the Trial Chamber would have erred had it applied it. The Appeals Chamber's holding in *Fofana and Kondewa* addressed sentencing considerations for the gravity of the crime, not the form of participation which constitute the convicted person's criminal conduct.[1958] With respect to the convicted person's participation in the crime, the Appeals Chamber finds that it is appropriate to have recourse to Sierra Leonean law. In this respect, Sierra Leonean law and the jurisprudence of this Court regarding the punishment of convicted persons are consistent.

669. The Post-Second World War caselaw further illustrates that sentencing for international crimes has historically relied on the totality principle, and that there is no hierarchy or distinction for sentencing purposes between forms of criminal participation established in customary international law.[1959] The tribunals sentenced aiders and abettors to the most severe punishment where warranted, and did not distinguish between forms of criminal participation in the abstract in relation to sentencing, but looked rather to the gravity of the offence, the convicted person's actual conduct and the convicted person's individual circumstances.[1960] The Appeals Chamber does not accept the argument that variations in domestic law,[1961] applicable to domestic crimes, establish contrary state practice relevant to sentencing for international crimes.[1962] Accused persons are presumed to be aware that under customary international law, the most serious violations of international humanitarian law are punishable by the most severe of penalties,[1963] with sentences determined on the basis of the gravity of the offence and the totality of their culpable conduct, without regard to the provisions of domestic law or established sentencing tariffs.[1964]

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4. Conclusion

670. In light of the foregoing, the Appeals Chamber holds that the totality principle exhaustively describes the criteria for determining an appropriate sentence that is in accordance with the Statute and Rules, and further holds that under the Statute, Rules and customary international law, there is no hierarchy or distinction for sentencing purposes between forms of criminal participation. The Appeals Chamber concludes that the Trial Chamber erred in law by holding that aiding and abetting liability generally warrants a lesser sentence than other forms of criminal participation.

671. In regard to Ground 43, the Appeals Chamber concludes that the Trial Chamber did not err by noting the law of Sierra Leone on sentencing practice. Accordingly, Defence Ground 43 is dismissed in its entirety.

B. Alleged Lack of Notice of Aggravating Factors

1. Submissions of the Parties

672. In Ground 44, the Defence contends that of the four aggravating factors considered by the Trial Chamber, the Prosecution only argued one in its sentencing submissions, and that it thus had no notice of the other three, thereby denying Taylor his fair trial right to be heard.[1965] It submits that the Trial Chamber erred in law and in fact by considering the other three aggravating factors *proprio motu* and placing substantial weight on them.[1966]

673. The Prosecution responds that it made submissions on all four identified factors, that the Defence had broad notice of all the issues considered by the Trial Chamber as aggravating factors and that the Defence was afforded sufficient opportunity to be heard on sentencing.[1967] It further submits that a Trial Chamber has broad discretionary powers to identify aggravating factors based on the totality of the evidentiary record,[1968] and in the present case the Trial Chamber properly exercised its discretion in deciding on the factors to be taken into account in aggravation.[1969]

2. Discussion

674. Every accused person has the right to be heard under Article 17(2) of the Statute, which provides that "the accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the Protection of victims and witnesses."[1970] Rule 100(A) and (B) provide that the Parties shall submit any relevant information in writing,[1971] and make oral submissions at a sentencing hearing that *may assist* the Trial Chamber in determining an appropriate sentence.[1972] The Parties filed their Sentencing Briefs on 3 and 10 May 2012, and the Trial Chamber heard oral arguments at a Sentencing Hearing on 16 May 2012. The Trial Chamber further accorded Taylor the opportunity to address the Court personally during the Sentencing Hearing, which he did for thirty minutes.[1973] The Appeals Chamber finds that the Defence was provided a full opportunity to be heard.

675. It is well-established that Trial Chambers have considerable discretion in identifying and then weighing facts due to their obligation to individualise the penalty when determining an appropriate sentence.[1974] The Appeals Chamber holds that a Trial Chamber is not limited to considering factors identified by the Parties in their sentencing submissions. The Parties' submissions may be of assistance, but the Trial Chamber is ultimately responsible for identifying and weighing relevant facts from the entire evidentiary record, of which the convicted person has notice. In the instant case, the Prosecution and Defence made written and oral submissions. The Trial Chamber had the assistance of those submissions, but was not limited to the facts raised in them. The Trial Chamber identified facts it considered relevant to its sentencing decision based on the entire evidentiary record of the trial. The Appeals Chamber sees no error.

3. Conclusion

676. Defence Ground 44 is dismissed in its entirety.

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C. Aggravating Factors

1. The Trial Chamber's Findings

677. In addition to other relevant facts, the Trial Chamber considered the following facts for the purpose of sentencing:[1975] (i) Taylor's leadership role during the Indictment Period as President of Liberia and as a member of the ECOWAS Committee of Five;[1976] (ii) Taylor's special status and his responsibility at the highest level;[1977] (iii) the extraterritoriality of Taylor's criminal acts;[1978] and (iv) Taylor's exploitation of the Sierra Leonean conflict for financial gain.[1979]

678. The Trial Chamber found that Taylor's "special status" as Head of State "puts him in a different category of offenders for the purpose of sentencing."[1980] Similarly, it found that Taylor is in a "class of his own when compared to the principal perpetrators who have been convicted by this Court" because he was functioning in his own country at the highest level of leadership.[1981] It further found that, as Head of State and a member of the ECOWAS Committee of Five and later, the Committee of Six, Taylor was part of the process that was relied on my the international community to bring peace to Sierra Leone. However, rather than promoting peace, Taylor's role in supporting the military operations of the RUF/AFRC through, *inter alia*, the supply of arms and ammunition, prolonged the conflict.[1982] The Trial Chamber thus found that Taylor's special status and his responsibility at the highest level is an aggravating factor.[1983] The Trial Chamber concluded:

> Leadership must be carried out by example, by the prosecution of crimes not the commission of crimes. As we enter a new error of accountability, there are no true comparators to which the Trial Chamber can look for precedent in determining an appropriate sentence in this case. *However, the Trial Chamber wishes to underscore the gravity it attaches to Taylor's betrayal of public trust.*[1984]

679. The Trial Chamber also found that although Taylor was never physically present in Sierra Leone, his actions caused and prolonged the harm and suffering inflicted on its people and his "heavy footprint" is in Sierra Leone.[1985] It further considered that although the principle of non-intervention governs conduct between States, its violation by a Head of State individually engaging in criminal conduct can be taken into account as an aggravating factor.[1986] It accordingly considered that the extraterritoriality of Taylor's acts of support and assistance to the RUF/AFRC was an aggravating factor.[1987]

2. Submissions of the Parties

680. In Ground 42, the Defence contends that the Trial Chamber erred in law in considering the extraterritoriality of Taylor's conduct and breach of trust as aggravating factors.[1988] It argues that the Trial Chamber erroneously applied customary international law principles of state responsibility to find that the extraterritoriality of conduct by a Head of State is an aggravating factor relevant to sentencing.[1989] It submits that principles of state responsibility have no legal application in sentencing of individuals convicted under the principle of individual criminal responsibility.[1990] Additionally, the Defence submits that breach of trust aggravates culpability "when the person in authority has a direct duty or obligation to protect or defend civilians under his protection . . . and he breaches this obligation."[1991] It argues that because Taylor did not hold any similar position of public trust and authority in relation to the victims of the war in Sierra Leone as opposed to the Liberian people, the Trial Chamber erred in giving weight to abuse of trust as increasing the gravity of Taylor's conduct.[1992] The Defence further submits that the Trial Chamber erroneously double-counted to Taylor's detriment his position as Head of State.[1993]

681. The Prosecution responds that the Defence misconstrues the Trial Chamber's approach and that the Trial Chamber did not apply extraneous principles of law in sentencing Taylor.[1994] It submits that "[a]ggravating factors are effectively those circumstances directly related to the commission of the offence, beyond the elements of the crime, which increase the culpability of the crime," and that the extraterritorial nature of Taylor's actions qualified as such.[1995] Furthermore, it argues that the Trial Chamber was correct in considering breach of trust as an aggravating factor,[1996] as Taylor owed a duty to the civilians of Sierra Leone because of the positions of authority and trust he held at the international level *vis-à-vis* the conflict in Sierra Leone, both as Head of State and as a member of the ECOWAS Committee of Six.[1997] It contends that, consistent with the jurisprudence of the Special Court, Taylor's position as President of Liberia and member of the ECOWAS Committee of Six was considered separately

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as regards the position itself and in relation to his breach of trust,[1998] and that the extraterritorial nature of Taylor's actions was considered as a separate and distinct aggravating factor by the Trial Chamber.[1999]

3. Discussion

(a) Extraterritoriality of Taylor's Acts

682. The Appeals Chamber notes that in assessing the "gravity of the offence" as part of its determination of the appropriate sentence, the Trial Chamber took into account the consequences of the crimes on the immediate victims, the relatives of the victims and/or the broader targeted group.[2000] In assessing additional facts, the Trial Chamber further took into account the extraterritorial nature and consequences of Taylor's acts and conduct.

683. The Appeals Chamber considers that it was unnecessary for the Trial Chamber to refer to public international law in order to take into consideration the extraterritorial nature and consequences of Taylor's acts and conduct. The Appeals Chamber accepts the Trial Chamber's finding that the extraterritorial nature and consequences of Taylor's acts and conduct are directly related to Taylor and the gravity of his culpable conduct, justifying holding him responsible.[2001] As the Trial Chamber found, before the invasion of Sierra Leone in March 1991, Taylor publicly threatened on the radio that "Sierra Leone would taste the bitterness of war"[2002] because it was supporting ECOMOG operations in Liberia impacting Taylor's NPFL forces.[2003] That Taylor's acts and conduct throughout the Indictment Period "left a heavy footprint" in Sierra Leone and had extraterritorial consequences is confirmed by the United Nations Security Council's determination in October 1997 that "the situation in Sierra Leone constitutes a threat to international peace and security in the region."[2004] Taylor's acts and conduct did not only harm the victims of the crimes and their immediate relatives, but fuelled a conflict that became a threat to international peace and security in the West African sub-region. The Appeals Chamber concludes that it was proper for the Trial Chamber to consider the extraterritorial nature and consequences of Taylor's acts and conduct in assessing the gravity of the totality of his culpable conduct.

(b) Breach of Trust

684. Immediately after he was elected President of Liberia in August 1997, Taylor was appointed to the ECOWAS Committee of Five, which was established to help restore peace to Sierra Leone.[2005] The members of the Committee decided to put Taylor "in the front line" of their peace mandate, because of his experience in dealing with insurgency groups and also because Sierra Leone and Liberia shared a common border.[2006] Taylor admitted in his testimony that he got involved in the Committee of Five because:

> it became a duty and a responsibility to help in whatever way that I could to help end this conflict in Sierra Leone, because unless it ended, Liberia would never move. That's why I got involved.[2007]

On becoming a member of the Committee of Five, Taylor understood that he had assumed a responsibility towards the Sierra Leonean people to assist in ending the civil conflict. He was also relied on by the international community to help bring peace to Sierra Leone. Yet, rather than end the civil war in Sierra Leone, as he had undertaken to do, he helped to fuel it in various ways, including, *inter alia*: (i) while he was participating in ECOWAS efforts to promote peace in Sierra Leone, Taylor continued to provide arms and ammunition to the RUF/AFRC[2008] in exchange for diamonds;[2009] (ii) Taylor "was engaged in arms transactions at the same time that he was involved in the peace negotiations in Lomé, publicly promoting peace at the Lomé negotiations, while privately providing arms and ammunition to the RUF/AFRC";[2010] and (iii) from the time Issa Sesay assumed leadership of the RUF, Taylor began advising him not to disarm, even though Issa Sesay himself was enthusiastic about disarmament at that time.[2011] In light of its findings of fact, the Trial Chamber found that Taylor's abuse of the trust of the Sierra Leonean people and the international community was a personal characteristic increasing the gravity of his culpable conduct.

685. The Appeals Chamber does not accept the Defence submission that Taylor did not have a position of public trust and authority in relation to the people of Sierra Leone. Taylor himself admitted that he did, and that the people of Sierra Leone and the international community trusted him to encourage the RUF/AFRC to participate in peace negotiations and accept a peaceful resolution of the conflict. The Appeals Chamber considers that in this case breach

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of trust concerns matters of fact, not legal duties.[2012] The Appeals Chamber holds that the Trial Chamber was not required to identify an enforceable legal duty in order to recognise that *in fact* the international community and Sierra Leoneans placed their trust in Taylor to help end the conflict. The Appeals Chamber further accepts the Trial Chamber's findings that Taylor publicly purported to accept that trust and work in the interest of peace, while he in reality abused that trust by aiding and abetting the widespread and systematic commission of crimes against the civilian population of Sierra Leone throughout the Indictment Period and planning the attack on Freetown. The Appeals Chamber thus concludes that the Trial Chamber reasonably and properly considered Taylor's abuse of trust in assessing the gravity of the totality of his culpable conduct.

(c) Double-Counting

686. The Appeals Chamber recalls that a Trial Chamber must ensure that it does not allow the same factor to detrimentally influence the convicted person's sentence twice.[2013] An appellant bears the burden of demonstrating that the Trial Chamber impermissibly double-counted the factor at issue.[2014]

687. The Appeals Chamber does not accept the Defence submission that the Trial Chamber impermissibly double-counted Taylor's role as Head of State. Taylor's position as Head of State was multifaceted, involving distinct aspects including his leadership role, his further role as a direct participant in the peace process in a position of public trust and his special status as a Head of State who aided and abetted and planned the commission of crimes. The Appeals Chamber concludes that it was proper for the Trial Chamber to consider the different aspects of Taylor's acts and conduct in assessing the gravity of the totality of Taylor's culpable conduct, and that the Trial Chamber did not impermissibly double-count the same factor.

4. Conclusion

688. The Appeals Chamber concludes, therefore, that the Defence does not demonstrate an error in the Trial Chamber's identification and assessment of facts relevant to the totality of Taylor's culpable conduct.

D. Mitigating Factors

1. The Trial Chamber's Findings

689. The Trial Chamber considered[2015] that the fact that a sentence is to be served in a foreign country does not constitute a mitigating circumstance in sentencing.[2016] It further noted the Defence submission that Taylor had expressed sympathy and compassion for victims of the crimes and had stated that "[t]errible things happened in Sierra Leone and there can be no justification for the terrible crimes," which the Defence argued should be considered as a mitigating factor in sentencing.[2017] The Trial Chamber found, however, that Taylor did not accept responsibility for the crimes and that Taylor's statements did not constitute remorse that would merit recognition for sentencing purposes.

2. Submissions of the Parties

690. The Defence contends in Ground 42 that the Trial Chamber erred in holding that "the fact that a sentence is to be served in a foreign country should not be considered in mitigation."[2018] It submits that, contrary to the Trial Chamber's holding, the *Sesay et al.* Trial Chamber recognised that "in general terms, sentences served abroad . . . would normally amount to a factor in mitigation", but held in that case that there was a lack of conclusive information regarding the accused's place of imprisonment.[2019] The Defence submits that the *Sesay et al.* Trial Chamber's finding was upheld by the Appeals Chamber when it found "no error in the . . . decision not to mitigate the Appellants sentences as a consequence of the fact that they will likely be served outside of Sierra Leone."[2020] It submits that in the instant case the only factual finding open to the Trial Chamber was that Taylor *will* serve his sentence in a foreign state, unlike in *Sesay et al.* where this was only *likely*.[2021]

691. The Defence further contends in Ground 45 that the Trial Chamber committed a discernible error in finding that Taylor's expressions of sympathy did not constitute a fact in mitigation because the Defence put the Prosecution

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to the proof of the crime-base.[2022] It submits that the right to cross-examine witnesses is recognised under international human rights law and is expressed as a "minimum guarantee" under Article 17(4) of the Statute.[2023]

692. The Prosecution responds that there is no international authority which supports the contention that serving a sentence abroad is a mitigating factor in sentencing.[2024] It submits that the Trial Chamber's statement was *obiter dictum*, and that the *Sesay et al.* Appeals Chamber's holding—that there is no jurisprudence recognising serving a sentence abroad as a mitigating factor—is the binding authority on this point.[2025]

693. The Prosecution further responds that the Trial Chamber did not give weight to the fact that the Defence required the Prosecution to prove the crime base,[2026] but only explained that it did not accept the Defence assertion that the Defence had agreed to the crime-base evidence.[2027] It submits further that the Trial Chamber separately and properly exercised its discretion in finding that Taylor's statements and comments of remorse were not mitigating circumstances for sentencing purposes.[2028]

3. Discussion

694. The Defence misapprehends the Appeals Chamber's holding in *Sesay et al*. In that Judgment, the Appeals Chamber noted that it is common practice that convicted persons from international criminal tribunals serve their sentences in foreign countries, and that there is no jurisprudence that such circumstances qualify as a mitigating factor.[2029] The Appeals Chamber considers that the Trial Chamber did not abuse its discretion in considering that serving a sentence in a foreign country is not a fact in mitigation.

695. The Appeals Chamber further holds that in order for remorse to be considered as a mitigating factor, it must be real and sincere.[2030] A Trial Chamber is not required to find that every acknowledgement that crimes were committed or expression of sympathy for the victims establishes real and sincere remorse constituting a fact in mitigation.[2031] It is always within the Trial Chamber's discretion to determine whether or not real and sincere remorse is demonstrated, including when the convicted person does not accept responsibility for the crimes.[2032] In the instant case, the Trial Chamber acknowledged that Taylor accepted that crimes were committed in Sierra Leone, but did not find that he demonstrated real and sincere remorse meriting recognition for sentencing purposes.[2033] The Appeals Chamber accepts the Trial Chamber's finding as a proper exercise of its discretion.

4. Conclusion

696. The Appeals Chamber rejects the Defence submission in Ground 42 that serving a sentence abroad is a fact in mitigation. The Appeals Chamber affirms the Trial Chamber's conclusion that Taylor did not demonstrate real and sincere remorse warranting recognition in mitigation. Defence Ground 45 is dismissed in its entirety.

E. Alleged Errors in the Exercise of Discretion

1. The Trial Chamber's Findings

697. The Trial Chamber sentenced Taylor to a single term of imprisonment of fifty (50) years for all the Counts on which he was found guilty.[2034]

698. In reaching this sentence, the Trial Chamber reasoned as follows.[2035] The Trial Chamber found Taylor guilty of planning and aiding and abetting crimes that were of the "utmost gravity in terms of the scale and brutality of the offences, the suffering caused on the victims and their families; the vulnerability of the victims and the number of victims."[2036] It described the impact of the crimes committed on the victims physically, emotionally and psychologically.[2037] It noted, in particular, that amputees without arms are unable to do the simplest tasks that are taken for granted, and that they have to live on charity because they can no longer work;[2038] that young girls have been publicly stigmatised and will never recover from the trauma of rape, sexual slavery and in many cases, the unwanted pregnancy to which they were subjected;[2039] and that both boy and girl child soldiers suffer from public stigma.[2040] It described the effects of the crimes committed on the victims' families and on society as "devastating" and noted that "many of the victims were productive members of society . . . and are now reduced to beggars, unable to work as a result of the injuries inflicted on them."[2041] In assessing the gravity of the crimes committed, the Trial Chamber

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considered the evidence of several witnesses whose testimonies highlighted the brutality of the crimes committed, the suffering caused on the victims and the victims' vulnerability.[2042]

699. In assessing Taylor's role in the commission of the crimes, the Trial Chamber considered the forms of criminal participation for which he was convicted (aiding and abetting and planning) and the form and degree of his participation. It noted in particular that Taylor's conviction for aiding and abetting is based on several factors including: supplying arms and ammunition, providing military personnel and providing various forms of sustained operational support.[2043] Additionally, the Trial Chamber considered that Taylor provided encouragement and moral support through ongoing consultation and guidance.[2044] The Trial Chamber determined that the cumulative impact of these various acts of aiding and abetting heightened the gravity of Taylor's criminal conduct. Furthermore, the steady flow of arms and ammunition that Taylor supplied to the rebels extended the duration of the conflict in Sierra Leone and the commission of the crimes it entailed.[2045] The Trial Chamber concluded that "had the RUF/AFRC not had this support from Mr. Taylor, the conflict and the commission of crimes might have ended much earlier."[2046]

700. The Trial Chamber did not find any factors in mitigation.[2047]

2. Submissions of the Parties

(a) Defence Appeal

701. The Defence contends in Ground 42 that the Trial Chamber erroneously failed to follow Special Court sentencing practices with respect to aiding and abetting liability as established in previous cases.[2048]

702. The Prosecution responds that even though the Trial Chamber noted the sentencing practices of the Special Court and the ICTY and ICTR, in determining an appropriate sentence, each case should be assessed on a case-by-case basis.[2049]

(b) Prosecution Appeal

703. The Prosecution submits in its Ground 4 that the Trial Chamber erred in the exercise of its discretion by imposing a sentence that fails to adequately reflect the gravity of the totality of Taylor's criminal conduct and overall culpability.[2050] It argues that the Trial Chamber failed to give sufficient weight to its findings on Taylor's role in the conflict and the commission of crimes,[2051] failed to give sufficient weight to Taylor's conviction for planning the commission of crimes[2052] and gave undue and erroneous consideration to aiding and abetting as a form of criminal participation and insufficient weight to Taylor's actual criminal conduct.[2053]

704. The Defence first responds that the numerous references to Taylor's conduct in the Trial Judgment and the Sentencing Judgment demonstrate that the Trial Chamber was fully cognisant of his conduct and gave it due consideration in sentencing.[2054] Second, it submits that, contrary to the Prosecution submissions, the Trial Chamber made extensive findings pertaining to Taylor's planning convictions.[2055] Third, it contends that although the Trial Chamber correctly identified the principle that convictions for aiding and abetting generally warrant a lesser sentence than other forms of criminal participation, it nonetheless failed to apply it to the present case when it decided not to reduce Taylor's sentence solely on the basis of his status as a Head of State.[2056]

3. Discussion

(a) The Sentencing Practice of the Special Court

705. In accordance with the totality principle, a Trial Chamber is required to impose a sentence reflecting the inherent gravity of the totality of the criminal conduct of the accused.[2057] The totality principle requires an individualised assessment of the particular circumstances of the case. As such, any attempt to compare an accused's case with others that have already been the subject of final determination is of limited assistance in challenging a sentence.[2058] As the Appeals Chamber held in *Sesay et al.*:

> The relevance of previous sentences is however often limited as a number of elements relating *inter alia* to the number, type and gravity of the crimes committed, the personal circumstances of the convicted person and the presence of mitigating and aggravating circumstances, dictate different

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> results in different cases such that it is frequently impossible to transpose the sentence in one case *mutatis mutandis* to another. This follows from the principle that the determination of the sentence involves the individualisation of the sentence so as to appropriately reflect the particular facts of the case and the circumstances of the convicted person.[2059]

706. In the instant case, the Trial Chamber properly referred to the gravity of the crimes for which Taylor was convicted and considered his role in their commission. Further, the Trial Chamber compared the circumstances of Taylor's case to other cases that have been determined by this Court. It noted that Taylor's status as a Head of State puts him in a different category of offenders, stating that "there are no true comparators to which [it] can look for precedent in determining an appropriate sentence in this case."[2060] In light of the foregoing, the Appeals Chamber concludes that the Defence fails to demonstrate any discernible error in the exercise of the Trial Chamber's discretion in sentencing.

(b) The Totality of Taylor's Culpable Conduct

707. The Appeals Chamber recalls its conclusion that the Trial Chamber erred in law by holding that aiding and abetting liability generally warrants a lesser sentence than other forms of criminal participation.[2061] The Appeals Chamber has further rejected the Parties' other challenges to the sentence imposed by the Trial Chamber. The remaining issues are first, whether, as the Prosecution submits, the Trial Chamber's error of law sufficiently impacted its determination of the appropriate sentence as to result in a discernable error, and second, whether the Prosecution has otherwise demonstrated that the Trial Chamber failed to exercise its discretion properly in determining the sentence. The Appeals Chamber also recalls that it has revised Taylor's conviction for planning crimes.[2062]

4. Conclusion

708. Defence Ground 42 is dismissed in its entirety. Prosecution Ground 4 is dismissed in its entirety. In light of the above considerations, the Appeals Chamber concludes that the sentence imposed by the Trial Chamber is fair and reasonable in light of the totality of the circumstances.

XI. DISPOSITION

For the foregoing reasons, **THE APPEALS CHAMBER**

PURSUANT to Article 20 of the Statute and Rule 106 of the Rules of Procedure and Evidence;

NOTING the written submissions of the Parties and their oral arguments presented at the hearings on 22 and 23 January 2013;

SITTING in open session;

UNANIMOUSLY;

WITH RESPECT TO THE DEFENCE'S GROUNDS OF APPEAL;

NOTES that Ground 35 has been withdrawn;

ALLOWS Ground 11, in part, **REVISES** the Trial Chamber's Disposition for planning liability under Article 6(1) of the Statute by deleting Kono District under Counts 1–8 and 11, and **DISMISSES** the remainder of the Ground;

DISMISSES the remaining Grounds of Appeal;

WITH RESPECT TO THE PROSECUTION'S GROUNDS OF APPEAL;

ALLOWS Ground 4, in part, **HOLDS** that the Trial Chamber erred in law in finding that aiding and abetting liability generally warrants a lesser sentence than other forms of criminal participation, and **DISMISSES** the remainder of the Ground;

DISMISSES the remaining Grounds of Appeal;

AFFIRMS the sentence of fifty (50) years imprisonment imposed by the Trial Chamber;

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ORDERS that this Judgment shall be enforced immediately pursuant to Rule 119 of the Rules of Procedure and Evidence;

ORDERS, in accordance with Rule 109 of the Rules of Procedure and Evidence, that Charles Ghankay Taylor remains in the custody of the Special Court for Sierra Leone pending the finalization of arrangements to serve his sentence.

Delivered on 26 September 2013 at The Hague, The Netherlands.

Justice George Gelaga King
Presiding

Justice Emmanuel Ayoola

Justice Renate Winter

Justice Jon_ M. Kamanda

Justice Shireen Avis Fisher

Justice Fisher appends a Concurring Opinion to the Judgment in which Justice Winter joins.

[Seal of the Special Court for Sierra Leone]

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CONCURRING OPINION OF JUSTICE SHIREEN AVIS FISHER ON AIDING AND ABETTING LIABILITY

709. I fully agree with the Appeals Chamber's reasoning and conclusion as to the law of aiding and abetting liability. However, I consider it necessary to further address two of the Defense's arguments in support of its position that the elements of aiding and abetting liability under customary international law as interpreted and applied in this case, are impermissibly broad.

710. The Appeals Chamber, in affirming the Trial Chamber, has unanimously concluded that under customary international law, substantially assisting the commission of crimes knowing the consequence of one's acts incurs individual criminal liability for those crimes. I am firmly of the view that this law is in accordance with accepted principles of criminal law[2063] and that the customary status of this law is not in doubt.

711. The Defense argues that the application of the law of aiding and abetting as interpreted by the Trial Chamber is overbroad in the context of crimes committed in armed conflicts, and poses the question, "how do we define the limits where there is nothing whatsoever intrinsic in the nature of assistance which tells us what is aiding and abetting," and warns that "the *actus reus* [of aiding and abetting liability] can actually be quite easily fulfilled quite unconsciously by the alleged aider and abetter."[2064] The Appeals Chamber seriously considered this question and responds in its holding that the law of individual criminal responsibility does not criminalise just *any* act of assistance to a party to an armed conflict, nor does it criminalise *all* acts or conduct that may result in assistance to the commission of a crime. Stated simply, the law does not impose strict liability.

712. The law on aiding and abetting criminalises knowing participation in the commission of a crime where an accused's willing act or conduct had a substantial effect on the crime. I would add, by way of further explanation, that the customary elements for aiding and abetting liability contain express limitations to protect the innocent, regardless of the context in which the crimes are committed: the accused's acts or conduct must have a *substantial effect* on the crime; the accused must commit the acts with the *knowledge* that the acts will assist in the commission of the crime OR with *awareness* of the *substantial likelihood* that they will; and the accused must be *aware* of the *essential elements* of the crime which his or her acts or conduct assist. Every case is fact specific, and in all cases the accused may challenge the factual predicates of the essential elements, raise affirmative defenses recognized by law, and argue mitigating circumstances.

713. It is true of course that an accused may provide assistance to both lawful and unlawful activities. However, no system of criminal law excuses unlawful conduct because the accused also engages in lawful conduct. The law presumes that all of an accused's conduct is lawful—the Prosecution must prove beyond reasonable doubt that some of the accused's conduct was unlawful. If the Prosecution proves beyond a reasonable doubt that: (i) a crime was committed; and (ii) the accused *knowingly assisted* the commission of the crime, or was *aware* that there was a *substantial likelihood* that his acts would assist in the commission of the crime; and (iii) his acts or conduct had *a substantial effect* on the commission of the crime; and (iv) the accused had an *awareness* of the essential elements of the underlying crime his acts or conduct assisted; *then* criminal liability for aiding and abetting that crime is established. If any of these four elements is not proved beyond a reasonable doubt, then the accused will not be found guilty of aiding and abetting a crime.

714. It is likewise true that liability for aiding and abetting is not restricted to those who want the crimes to be committed. Criminal law legitimately punishes those who know what they are doing and proceed to act regardless of whether they desire or are merely indifferent to the pain and suffering to which they contribute.

715. The essential elements of aiding and abetting liability as properly applied in this case establish the boundaries which protect against over-criminalization. As with all forms of criminal participation, it is up to the Trial Chamber to test the facts it finds against the essential elements, mindful of the limitations, the burden of proof, and the presumption of innocence. This is the routine task of judges, and there is nothing different in the way judges interpret and apply the elements of aiding and abetting from the way they interpret and apply the elements of any other mode of liability or substantive crime. The Appeals Chamber unanimously determined that the Trial Chamber committed no error in performing this task in the present case.

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716. I comment on the Defense's additional argument in support of its overbreadth contention because I consider it very troublesome. The Defense argues that the essential elements of aiding and abetting as applied and relied on by the Trial Chamber are insufficient and require additional or different elements or analysis because the concept of aiding and abetting is "so broad that it would in fact encompass actions that are today carried out by a great many States in relation to their assistance to rebel groups or to governments that are well known to be engaging in crimes of varying degrees of frequency . . . ."[2065] Such assistance, the Defense argues, "is going on in many other countries that are supported in some cases by the very sponsors of this Court."[2066] By this argument, the Defense purposely confuses customary law-making with international law-breaking.

717. Furthermore, suggesting that the Judges of this Court would be open to the argument that we should change the law or fashion our decisions in the interests of officials of States that provide support for this or any international criminal court is an affront to international criminal law and the judges who serve it. The Defense has interjected a political and highly inappropriate conceit into these proceedings, which has no place in courts of law and which has found no place in the Judgment of this Court. The Judges of this Court, like our colleagues in our sister Tribunals, are sworn to act independently "without fear or favour, affection or ill-will" and to serve "honestly, faithfully, impartially and conscientiously."[2067] To suggest otherwise wrongfully casts a cloud on the integrity of judges in international criminal courts generally and the rule of law which we are sworn to uphold, and encourages unfounded speculation and loss of confidence in the decision-making process as well as in the decisions themselves. I wish to make clear that this line of argument is absolutely repudiated.[2068]

718. Judges do not decide hypothetical cases. They look to the individual case before them and apply the law as they are convinced it exists to the facts that have been reasonably found. Reasonable minds may differ on the law. I am convinced that the customary law on the elements of aiding and abetting are as stated by the Trial Chamber and that application of the law to the facts in this particular case was properly and fairly calculated. As with all areas of the law, international criminal law is founded on fact and experience. "[I]t cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."[2069] Judicial decisions require the exercise of human judgment. Like the presumption of innocence, the presumption that judges are acting *independently* in the exercise of their *best* judgment in *the case before them* is fundamental to the rule of law. Judges privileged to sit on international criminal courts regard the duty underlying both of these presumptions as inviolable.

719. At the Special Court, the law is transparent, public and faithful to the principle that one is only held accountable for his or her own acts. The Prosecutor independently investigates and brings indictments against those suspected of criminal violations, without regard to status or official position, holding all equally accountable before the law. The accused is guaranteed the confidential assistance of professional and independent counsel, who are bound to serve their client's interest in accordance with their ethical responsibilities as officers of the court. The Statute and Rules ensure the accused's right to a fair and public trial, so that the public may see the evidence laid against the accused and his defense against the charges during transparent adversarial proceedings. Finally, an independent and impartial judiciary, having ensured the fairness of the proceedings and applying the presumption of innocence and the standard of proof beyond a reasonable doubt, deliberates in secret and announces its reasoned judgment in public. That judgment is subject to appeal and reviewed by five other independent judges. These are the essential safeguards for the rights of the accused and the interests of justice.

720. If the presumption of innocence outweighs the evidence of personal culpability, courts of law will acquit the accused. The rule of law requires respect for such decisions, even by those who disagree with them. In this case, the confirmed findings overwhelmingly establish that Mr. Taylor, over a five year period, individually, and knowingly, and secretly, and substantially assisted the perpetration of horrific crimes against countless civilians in return for diamonds and power, while publicly pretending that he was working for peace. In the unanimous, independent judgment of the three Trial Judges that composed the Trial Chamber and the five Appellate Justices that compose the Appeals Chamber,[2070] the presumption of innocence has been overcome beyond a reasonable doubt both as to the substantive crimes charged in the Indictment and Mr. Taylor's participation in those crimes.

721. Justice Winter joins in this Concurring Opinion.

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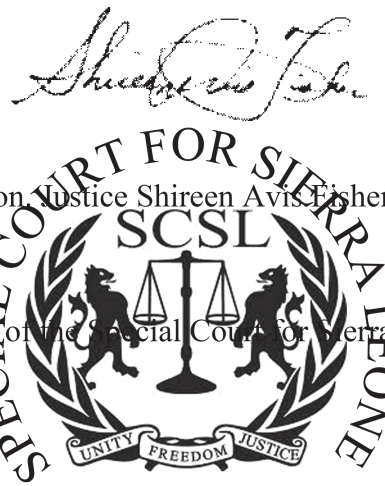
Done in The Hague, The Netherlands, this 26th day of September 2013.



Hon. Justice Shireen Avis Fisher

[Seal of the Special Court for Sierra Leone]

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XII. ANNEX A: PROCEDURAL HISTORY

722. The Defence filed a Motion for Extension of Time to File Notice of Appeal until 19 July 2012—an extension of the deadline prescribed by the Rules by five weeks.[2071] The Prosecution indicated that it supported this request to the extent of an extension of three weeks, being 5 July 2012.[2072] On 8 June 2012 the Designated Judge filed a Scheduling Order for Status Conference on 18 June 2012 to hear further submissions regarding the Defence Motion for Extension of Time to File Notice of Appeal and the Prosecutor's Response, and any further extension requests anticipated by the Parties for the completion of subsequent filings specified in Rules 111, 112, and 113.[2073] The Designated Judge further ordered that the deadline for filing of Notices of Appeal, pursuant to Rule 108(A), was stayed until further order of the Court.[2074] Following the Status Conference, both Parties filed Notice of Intention to Appeal.[2075]

723. On 20 June 2012 the Designated Judge filed a Decision on Defence Motion for Extension of time to File Notice of Appeal and lifted the stay for filing Notices of Appeal pursuant to Rule 108(A), and granted Defence's Motion to file a written Notice of Appeal on or before 19 July 2012.[2076] The Prosecution and the Defence filed their respective Notices of Appeal on 19 July 2012.[2077] The Defence raised forty-five (45) grounds of appeal and the Prosecution raised four (4) grounds of appeal.[2078]

724. Also on 19 July 2012, the Defence filed a Motion for Partial Voluntary Withdrawal or Disqualification of Appeals Chamber Judges.[2079] The Defence requested that, pursuant to Rules 15(A) and 15(B) of the Rules, in respect of grounds 36 and 37 of the Defence Notice of Appeal which arose from the statement made by the Alternate Judge that all the members of the Appeals Chamber voluntarily withdraw from these grounds.[2080] It requested that a separate appeal panel, composed of judges who did not participate in the decision and sanctions against the Alternate Judge, should determine those Grounds of Appeal.[2081] The Defence further submitted that in the event that the Appeals Chamber Judges do not withdraw voluntarily on the basis of the present motion, it respectfully invited them to refer the request to a separate and impartial panel of judges for a determination for disqualification.[2082] On 13 September 2012 the Appeals Chamber dismissed the motion in its entirety.[2083]

725. The Pre-Hearing Judge filed a Scheduling Order for Written Submissions regarding Rules 111, 112 and 113 on 20 July 2012 ordering the Parties requesting an extension of time and/or page limit to file a consolidated motion no later than 24 July 2012, any Responses to such Motions no later than 26 July 2012 and any Replies to such Responses no later than 27 July 2012.[2084] On 24 July 2012 the Defence filed for Extensions of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113[2085] and Prosecution filed Consolidated Motion Pursuant to Scheduling Order for Written Submissions regarding Rules 111, 112 and 113.[2086]

726. On 7 August 2012 the Pre-Hearing Judge granted the Parties an extension of thirty-two (32) days to file their Appellant's Submissions pursuant to Rule 111, which was to be submitted no later than 10 September 2012.[2087] The Parties were also granted an extension of thirty-nine (39) days to file their Respondent's Submissions pursuant to Rule 112, which was to be submitted no later than 2 November 2012.[2088] In regards to Rule 113, the Parties were granted an extension of two (2) days to file their Submissions in Reply to Rule 113, which was to be submitted no later than 9 November 2012.[2089] The Parties were granted an extension of two hundred (200) pages in total for their Appellant's Submissions and Respondent's Submissions, so that the Appellant's Submissions and Respondent's Submissions together must not exceed four hundred (400) pages or one hundred and twenty thousand words (120,000) word, whichever is greater.[2090] Additionally, the Parties were granted an extension of twenty (20) pages for their Submissions in Reply, so that the Submissions in Reply must not exceed fifty (50) pages or fifteen thousand (15,000) words, whichever is greater.[2091]

727. On 15 August 2012 the Defence filed a motion for the reconsideration or review of the 7 August 2012 Decision, and requested that the Appeals Chamber grant the specific time and page limit extensions that it submitted.[2092] The Defence also requested an immediate stay of the prescribed time and page limits in the impugned decision, pending a decision on the motion by the Appeals Chamber.[2093]

728. On 21 August 2012 the Appeals Chamber denied the request for stay as the Parties were granted further extension of time.[2094] All Parties were given an additional and final extension of time for filing the Appellant's Submissions in the amount of 21 days, equal to the original time prescribed by Rule 111 for filing those submissions,

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so that Appellant's Submissions should be filed no later than 1 October 2012. The extension of page limits and time for the filing of Respondent's Submissions and Submissions in Reply issued by the Chamber through the Pre-Hearing Judge's Decision remained unchanged. The deadline for filing the Respondent's Submissions and Submissions in Reply were adjusted to reflect the 21 day extension for the filing of Appellant's Submissions, which were to be filed no later than 23 November 2012 and 30 November 2012, respectively.[2095]

729. On 31 August 2012 the Pre-Hearing Judge filed a Notice Relevant to Appeal Hearing that the appeal hearing, if any, should be held on 6, 7 and 10 December 2012.[2096]

730. The Prosecution and the Defence filed their respective Appellant's Submissions on 1 October 2012.[2097] On 4 October 2012 the Pre-Hearing Judge filed a Scheduling Order for Filings and Submissions.[2098] In the Defence's Appellant's Submission it repeated its notice of intent to move for the admission of additional evidence. To assist preparations for a fair and expeditious hearing and pursuant to Rules 54, 106(C), 109(B)(i), 112, 113 and 115, the Pre-Hearing Judge ordered that the Prosecution's Response under Rule 112 to Taylor's submissions on Grounds 7, 8, 9, 15, 16, 23, 32, 33, 36, 37 and 38 be filed no later than 26 October 2012. It was also ordered that Taylor's Rule 113 Submissions in Reply to the Prosecution's Rule 112 Response to the specified grounds, and any Motion pursuant to Rule 115, to be filed no later than 2 November 2012. Notice was also given in the event the Defence prevailed on its motion to present additional evidence, and the Chamber authorized the presentation of any such additional evidence and any rebuttal material, the authorized evidence shall be presented at a hearing scheduled on 28 November 2012 and such subsequent days as may be necessary.[2099]

731. On 5 October 2012 the Prosecution filed a motion for reconsideration or review of the Pre-Hearing Judge's 4 October 2012 Scheduling Order and requested the reinstatement of the original timetable issued on 21 August 2012, making all Respondent's Submissions due on 23 November 2012.[2100] On 16 October 2012 the Appeals Chamber granted the Prosecution Motion and ordered the original timetable contained in the Appeals Chamber Decision on 21 August 2012.[2101]

732. The Parties filed their Response Briefs on 23 November 2012.[2102] The Parties' Reply Briefs were filed on 30 November 2012.[2103]

733. The Pre-Hearing Judge filed a Scheduling Order on 30 November 2012 for oral arguments of the Parties to be presented and issues to be addressed on 6 and 7 December 2012.[2104] The Defence filed a Motion for Reconsideration or Review of "Scheduling Order" on 4 December 2012.[2105] On 5 December 2012 the Appeals Chamber granted the Defence Motion and ordered the rescheduling of the oral arguments of the Parties to be presented on 22 and 23 January 2013.[2106]

734. On 30 November 2012, the Defence filed a Motion to Present Additional Evidence Pursuant to Rule 115.[2107] It also filed on the same day a Motion for Disqualification of Justice Shireen Avis Fisher from Deciding the Defence Motion to Present Additional Evidence Pursuant to Rule 115.[2108] On 17 December 2012 the Appeals Chamber dismissed the Defence Motion for Disqualification of Justice Fisher from Deciding the Defence Motion to Present Additional Evidence Pursuant to Rule 115.[2109] On 18 January 2013 the Appeals Chamber gave notice that of its own initiative it would exercise the functions of the Pre-Hearing Judge pursuant to Rule 115 and decide the Rule 115 Motion.[2110] On the same day, the Appeals Chamber dismissed the Defence Motion to Present Additional Evidence Pursuant to Rule 115.[2111]

735. On 22 and 23 January 2013 oral arguments of the Parties were heard by the Appeals Chamber.

736. The Prosecution filed a Motion for Leave to File Additional Written Submissions regarding the ICTY Appeals Judgment in *Perišić* on 14 April 2013.[2112] On 20 March 2013, the Appeals Chamber denied the Prosecution motion.[2113] On 3 April 2013 the Defence requested leave to amend its notice of appeal in light of the *Perišić* Appeals Judgment.[2114] The Prosecution filed a response to the Defence request on 5 April 2013.[2115] On 11 April 2013 the Appeals Chamber denied the Defence request for the same reasons as stated in its decision on the Prosecution motion.[2116]

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XIII. ANNEX B: TABLE OF AUTHORITIES

A. Special Court for Sierra Leone

1. Taylor Case

Prosecutor v. Taylor, SCSL-03-01-I-003, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003 [*Taylor* Decision Approving the Indictment and Order for Non-Disclosure].

Prosecutor v. Taylor, SCSL-03-01-I-004, Warrant of Arrest and Order for Transfer and Detention, 7 March 2003 [*Taylor* Warrant of Arrest and Order for Transfer and Detention].

Prosecutor v. Taylor, SCSL-03-01-I-006, Order for the Disclosure of the Indictment, the Warrant of Arrest and Order for Transfer and Detention and the Decision and the Decision approving the Indictment and Order for Non-Disclosure, 12 June 2003 [*Taylor* Order for Disclosure and Decision Approving the Indictment and Order for Non-Disclosure].

Prosecutor v. Taylor, SCSL-03-01-I-074, Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment, 16 March 2006 [*Taylor* Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment].

Prosecutor v. Taylor, SCSL-03-01-I-079, Order Assigning a Case to a Trial Chamber, 31 March 2006 [*Taylor* Order Assigning a Case to a Trial Chamber].

Prosecutor v. Taylor, SCSL-03-01-PT-240, Order Designating Alternate Judge, 18 May 2007 [*Taylor* Order Designating Alternate Judge].

Prosecutor v. Taylor, SCSL-03-01-PT-263, Prosecution's Second Amended Indictment, 29 May 2007 [*Taylor* Second Amended Indictment].

Prosecutor v. Taylor, SCSL-03-01-T-723, Defence Application for Judicial Notice of Adjudicated facts from the AFRC Trial Judgment pursuant to Rule 94(B), 9 February 2009 [Defence Application for Judicial Notice].

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XIV. ANNEX C: DEFINED TERMS, GROUPS AND ABBREVIATIONS

A. Defined Terms

Short Name	Definition
Abuja I Peace Agreement	On 10 November 2000, a peace agreement known as the "Abuja I Peace Agreement" was signed by the Government of Sierra Leone and the RUF. The two parties affirmed their commitment to the Lomé Peace Agreement of 7 July 1999, agreed to an immediate ceasefire and agreed to continue with the disarmament process. (Trial Judgment, para. 69).
Abuja II Peace Agreement	A ceasefire review conference was held in Abuja in May 2001, in what became known as the "Abuja II Peace Agreement." From mid-2001, significant progress was made in the disarmament process. By the end of 2001, disarmament was complete and hostilities had ceased in all areas of Sierra Leone, with the exception of Kono District. On or about 18 January 2002, President Kabbah announced the end of hostilities in Sierra Leone, signalling the end of the war. (Trial Judgment, paras 69–70).
Appeals Chamber	Appeals Chamber of the Special Court for Sierra Leone
Bockarie/Taylor Plan	In November 1998 Bockarie met with Taylor in Monrovia and they designed a plan for RUF/AFRC forces to carry out the Bockarie/Taylor Plan, a two-pronged attack on Kono and Kenema with the ultimate objective of reaching Freetown. (Trial Judgment, paras 3109, 6958).
Bunumbu Training Camp (Camp Lion)	An RUF/AFRC training camp, at Bunumbu in Kailahun District in 1998, where crimes were committed, including the training of children under the age of 15 years. (Trial Judgment paras 1377–1378, 4105, 4109).
Burkina Faso Shipment	A shipment arranged in Burkina Faso in or around November 1998, that was unprecedented in volume of arms and ammunition and used in the implementation of the Bockarie/Taylor Plan. (Trial Judgment, paras 5507 and fn. 12266, 5524, 5527, 5719-5720).
First Liberian Civil War	In December 1989, Taylor led the NPFL insurgency into Liberia from Côte d'Ivoire and a civil war ensued. Its official end was in 1996. (Trial Judgment, para. 7).
Freetown Invasion	Collectively, the attacks on Kono and Makeni in December 1998, and the invasion of and retreat from Freetown between 23 December 1998 and February 1999. (Trial Judgment, para. 6994).
Indictment Period	30 November 1996 and 18 January 2002
Intervention	On 5 February 1998, ECOMOG commenced a major offensive against the RUF/AFRC forces and, by 14 February 1998, had succeeded in expelling the Junta from Freetown. On 10 March 1998, the Kabbah Government was restored to power in Sierra Leone. By mid-March 1998, ECOMOG, acting in concert with CDF, extended control to Bo, Kenema and Zimmi in the south of the country; Lunsar, Makeni and Kabala in the north; and Daru in the east. (Trial Judgment, para. 48).
Junta Period	25 May 1997 to February 1998 (Trial Judgment, paras 42, 43, 48).
Lomé Peace Accord	7 July 1999 peace agreement signed by President Kabbah and Foday Sankoh. (Trial Judgment, paras 64, 6780).
Magburaka Shipment	The Magburaka Shipment delivered by plane to Magburaka in Sierra Leone sometime between September and December 1997 to the RUF/AFRC. (Trial Judgment, paras 5406–5409).
Operational Strategy	The Trial Chamber found that the RUF/AFRC's operational strategy was characterised by a campaign of crimes against the Sierra Leonean population, including the crimes charged in all 11 Counts of the Indictment, which were inextricably linked to the strategy of the military operations themselves. This strategy entailed a campaign of terror against civilians as a primary *modus operandi*, to achieve military gains at any civilian cost and political gains in order to attract the attention of the international community and improve the RUF/AFRC's negotiating stance with the Sierra Leonean government. (Appeal Judgment, para. 253).
Operation No Living Thing	In around May 1998, fighters burnt homes, looted and killed civilians as part of "Operation No Living Thing" in Kenema. (Trial Judgment, paras 535, 549).

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Short Name	Definition
Operation Pay Yourself	In 1998, following the retreat of the RUF/AFRC fighters from Freetown and their regrouping at Masiaka, JPK announced "Operation Pay Yourself", resulting in a campaign of extensive looting which continued throughout the movement of the RUF/AFRC troops during this period. (Trial Judgment, paras 49, 533, 549).
Operation Spare No Soul	In late-1998, the RUF/AFRC instituted a campaign called "Operation Spare No Soul" in which fighters were encouraged to kill civilians. (Trial Judgment, paras 537, 549).
Operation Stop Election	"Operation Stop Election," launched on Election Day in March 1996, when RUF forces attacked areas including Bo, Kenema, Magburaka, Matotoka and Masingbi. Foday Sankoh and the RUF leadership wanted to stop the election, and to achieve this goal, Sankoh ordered RUF forces to commit murder and physical violence against civilians in order to instill terror in the population so that they would not vote and the elections would fail. (Trial Judgment, paras 39, 2531, 2539, 2541, 2553, 2554, 2560).
PC Ground	RUF/AFRC camp in Kono District. (Trial Judgment, paras 916–919).
Superman Ground/ Superman Compound	RUF/AFRC camp in Kono District. (Trial Judgment, paras 889–894).
Trial Chamber	Trial Chamber II
White Flower	Charles Taylor's residence in Monrovia (Trial Judgment, para. 4065).
Yengema Training Base	RUF/AFRC military training base, located at Yengema, near Koidu Highway, operating from December 1998 until 2000. (Trial Judgment, paras 1693, 1694)

B. Groups

Short Name	Name
AFL	Armed Forces of Liberia
AFRC	Armed Forces Revolutionary Council Sierra Leonean rebel group. On 25 May 1997, a group of SLA soldiers overthrew the government of President Kabbah in a coup d'état. On 28 May 1997, the group announced that they had formed the AFRC and taken over power in Sierra Leone. (Trial Judgment, paras 42, 43, 44, 6749).
CDF	Civil Defence Forces Sierra Leonean armed group. While in exile in 1997, President Kabbah united the local militias into a single armed force, known as the Civil Defence Forces. (Trial Judgment, para. 42).
ECOMOG	ECOWAS Monitoring Group ECOWAS force. On 5 February 1998, ECOMOG commenced a major offensive against the RUF/AFRC, commonly known as the Intervention, in order to restore President Kabbah to power. (Trial Judgment, para. 48).
Kamajors	*See* "CDF"
LURD	Liberians United for Reconciliation and Democracy Liberian rebel group. LURD had the objective of removing Taylor from power as President of Liberia. (Trial Judgment, paras 6656, 6658).
NPFL	National Patriotic Front of Liberia Liberian rebel group. In 1986, Taylor formed an armed group, the NPFL, in opposition to President Samuel Doe of Liberia. In 1989, he led his forces into Liberia and remained the leader of the NPFL throughout the Liberian Civil War. (Trial Judgment, para. 7)
RUF	Revolutionary United Front Sierra Leonean rebel group. The Sierra Leone Civil War commenced on 23 March 1991 when armed fighters known as the Revolutionary United Front launched an insurgency from Liberia's Lofa County into Sierra Leone's Kailahun District. (Trial Judgment, para. 18).

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Short Name	Name
SLA	Sierra Leone Army
SSS	Special Security Service, Government of Liberia
STF	Special Task Force In early 1991 the Sierra Leone Government created the STF, an armed group consisting of mainly Liberian recruits who were former ULIMO members, in order to assist the SLA in repelling the rebels. (Trial Judgment, para. 30).
The Supreme Council	The executive body of the Junta Government, composed of RUF and AFRC, in which JPK and Foday Sankoh were appointed Chairman and Vice-Chairman, respectively. As Sankoh was in custody in Nigeria, Lieutenant Colonel SAJ Musa served as Acting Vice-Chairman in Sankoh's absence. (Trial Judgment, para. 6750).
ULIMO	United Liberation Movement of Liberia for Democracy Liberian armed group. Initially formed to fight against the NPFL in Liberia and cooperated with the SLA to fight against the RUF in 1991. (Trial Judgment, para. 30)
ULIMO-K	United Liberation Movement of Liberia for Democracy—Kromah ULIMO split into two groups, ULIMO-J headed by Roosevelt Johnson and ULIMO-K headed by Alhaji Kromah. (Trial Judgment, paras 1386, 4343, 4360).
UNAMSIL	United Nations Mission in Sierra Leone created pursuant to Res. 1270.
West Side Boys	An RUF/AFRC splinter group formed in May 1999 by Bazzy, an AFRC member, and included a mixed group of AFRC, RUF and NPFL fighters. (Trial Judgment, paras 5742, 6759).

C. Abbreviations

Abbreviation	Name
aka	also known as
BFC	Battle Field Commander
BGC	Battle Group Commander
CO	Commanding Officer
CIC	Commander in Chief
ECtHR	European Court of Human Rights
ECOWAS	Economic Community of West African States
ECOWAS Committee of Four	The ECOWAS Committee of Four on the situation in Sierra Leone was composed of Nigeria, Guinea, Côte d'Ivoire and Ghana. (Trial Judgment, paras 44, 45).
ECOWAS Committee of Five	After Taylor's election, ECOWAS invited Taylor to join the ECOWAS Committee of Four for Sierra Leone, thereby transforming it into a Committee of Five. (Trial Judgment, paras 44, 45).
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee for the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia

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Abbreviation	Name
SBU and SGU	Small Boys Unit and Small Girls Unit The RUF/AFRC leadership instituted an organised system for the abduction, conscription, training and use of child soldiers, and further engaged in the abduction, military training, and use of children. SBUs and SGUs were made up of children generally in the range of 5 to 17 years. (Trial Judgment, paras 1597, 1603).
SCSL	Special Court for Sierra Leone
STL	Special Tribunal for Lebanon
UN	United Nations
UNWCC	United Nations War Crimes Commission
USD	United States Dollar
WMU	Witness Management Unit, Office of the Prosecutor
WVS	Witnesses and Victims Section, The Registry

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XV. ANNEX D: LIST OF PERSONS

A. RUF/AFRC Members

Name	Role in Conflict
Commanders:	
Johnny Paul Koroma a.k.a. JPK	Johnny Paul Koroma was leader and chairman of the AFRC. After the coup of 25 May 1997, JPK became the leader and chairman of the AFRC and he remained leader of the AFRC through much of the Indictment Period, although he was detained by Sam Bockarie in late February/early March 1998. At that time, he was arrested, and his wife was sexually assaulted. Bockarie placed JPK under house arrest in Kangama village near Buedu where he remained until mid-1999. (Trial Judgment, paras 42, 6749, 6754).
Foday Sankoh	Foday Sankoh was leader of the RUF by 1991 and remained leader throughout the Sierra Leonean Civil War, even during periods in which he was detained. (Trial Judgment, paras 2320, 6772, 6774, 6784).
Sam Bockarie a.k.a. Mosquito	Sam Bockarie led the RUF from March 1997, when Foday Sankoh was arrested, until December 1999, when he left Sierra Leone after falling out with Sankoh. Evidence suggests that Bockarie was killed in May 2003. (Trial Judgment, para. 154).
Issa Sesay	Issa Sesay was a RUF/AFRC commander and later Interim Leader of the RUF during the Indictment Period. He was promoted to Battle Group Commander by Sam Bockarie in March 1997, and promoted again by Bockarie to Acting Battlefield Commander in March 1998. After Bockarie left Sierra Leone, Foday Sankoh appointed Issa Sesay to be Battlefield Commander. When Sankoh was arrested in May 2000, Issa Sesay became Interim Leader of the RUF, and served as Interim Leader until the formal cessation of hostilities in January 2002. Issa Sesay was convicted by the SCSL and sentenced to 52 years imprisonment. (Trial Judgment, paras 359, 360). Defence witness. Credibility assessment: Trial Judgment, paras 359–372.
Hassan Papa Bangura a.k.a. Bomb Blast	Bomb Blast was a senior AFRC commander during the Indictment Period. (Trial Judgment, paras 645, 776).
Alex Tamba Brima a.k.a Gullit	Gullit was a senior AFRC commander during the Indictment Period and member of the AFRC Supreme Council. (Trial Judgment, para. 54).
Jabaty Jaward	Jabaty Jaward was a member of the RUF and later Taylor's Special Security Services (SSS). He was a clerk for Issa Sesay and Sam Bockarie's storekeeper until 2000, and a member of the Anti-Terrorist Unit (ATU) from early 2000. He was a member of the RUF Black Guard. (Trial Judgment, paras 2487, 2644, 2708, 6113). Prosecution witness. Credibility assessment: Trial Judgment, 2708.
Morris Kallon	Morris Kallon was a senior RUF commander during the Indictment Period. (Trial Judgment, paras 24, 645).
Ibrahim/ Brima Bazzy Kamara a.k.a. Bazzy	Bazzy was a senior AFRC commander during the Indictment Period. He later formed a splinter group named "the West Side Boys," in May 1999, which included a mixed group of AFRC, RUF and NPFL fighters. (Trial Judgment, paras 24, 645, 5742, 6759).
Idrissa Kamara a.k.a. Rambo Red Goat	Rambo Red Goat was a former SLA member and AFRC commander. He led a small contingent of troops sent by Sam Bockarie to Freetown, where they joined Gullit's fighters during the Freetown Invasion. (Trial Judgment, para. paras 645, 776, 3424, 3425, 3435).

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Name	Role in Conflict
Eddie Kanneh	Eddie Kanneh was a senior AFRC commander and served as Secretary of State East during the Junta Period, stationed in Kenema with Bockarie. From February 1998 to until the end of hostilities, Kanneh was an intermediary who delivered diamonds to Taylor for the RUF/AFRC in order to get arms and ammunition from him. (Trial Judgment, paras 585, 5875–5948, 5991–6058, 6145).
Karmoh Kanneh a.k.a. Captain Eagle	Karmoh Kanneh was a senior RUF commander who was closely associated with Sam Bockarie, and previously with Foday Sankoh. (Trial Judgment, paras 607, 623, 2704, 2881, 3689). Prosecution witness. Credibility assessment: Trial Judgment, para. 2704.
Santigie Borbor Kanu a.k.a. Five-Five	Five-Five was a senior AFRC commander during the Indictment Period. (Trial Judgment, paras 645, 776).
Samuel Kargbo a.k.a. Sammy, Honourable Sammy, Jungler	Samuel Kargbo was an AFRC Supreme Council member, and a soldier in the Sierra Leonean Army from 1990 to 2001 and one of the 17 coup plotters who overthrew the Kabbah government in May 1997. He became a member of the Supreme Council and was one of Johnny Paul Koroma's securities. He testified that he was detained by the RUF in Buedu along with JPK as they tried to flee to Liberia in around March 1998 and thereafter was sent by the RUF to Manowa Ferry, Kailahun Town and to Pendembu where he was appointed Deputy Brigade Commander in April/May 1998, a position he maintained until the Lomé Accord in July 1999. (Trial Judgment, para. 290). Prosecution witness. Credibility assessment: Trial Judgment, paras 290–295.
Abu Keita	Abu Keita was a former deputy chief of staff and general of ULIMO-K. He was sent by Taylor to the RUF/AFRC in 1998 as part of Scorpion Unit where he remained until 2002. (Trial Judgment, paras 213, 4491, 6922). Prosecution witness. Credibility assessment: Trial Judgment, paras 213–219.
Mike Lamin	Mike Lamin was a senior RUF commander during the Indictment Period. He was an instructor at Crab Hole, an RUF base located in Camp Naama in which RUF trained until March 1991.
Augustine Mallah	Augustine Mallah was a member of the RUF, and a security officer for Mike Lamin from 1996 to disarmament. (Trial Judgment, paras 752, 1623, 2533, 2647, 2811, 3811, 3929, 4160, 4878). Prosecution witness. Credibility assessment: Trial Judgment, para. 2522.
Brigadier Mani	Brigadier Mani was a former senior officer of the SLA. He was an AFRC member. (Trial Judgment, paras 3380, 6763).
Mustapha M. Mansaray	Mustapha M. Mansaray was an Internal Defence Unit Commander in the RUF. He testified that he was captured by RUF/SL and NPFL fighters in 1991, and that he remained a member of the RUF until disarmament in 2001. Mansaray also held several leadership positions within the IDU from 1994 to 2000, and served as the secretary to the RUF/SL Operational Commander and as transportation secretary in 2000. Mansaray testified that he was appointed to the post of mining commander in Nyaiga, Kono District in 2001. (Trial Judgment, para. 254). Prosecution witness. Credibility assessment: Trial Judgment, paras 254–262.
Gibril Massaquoi	Gibril Massaquoi was an RUF commander and an RUF spokesman. He was posted to the Guesthouse in Monrovia by Foday Sankoh in late 2000 to handle diplomatic issues pertaining to the RUF and make public statements on behalf of the RUF. (Trial Judgment, paras 645, 3371, 3395, 4261).
Dennis Mingo a.k.a. Superman	Superman was a senior RUF commander and Battlefield Commander for Kono District. Evidence suggests that he was killed in 2001. (Trial Judgment, paras 55, 154).

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Name	Role in Conflict
Isaac Mongor	Issac Mongor was a former NPFL member who remained in Sierra Leone and assumed the role of one of the most senior RUF commanders, overseeing several operations and being privy to operational orders. During the Junta Period he became a member of the Supreme Council. (Trial Judgment, paras 32, 274, 658, 1987, 2727, 2819, 2896, 3892, 5850, 6948). Prosecution witness. Credibility assessment: Trial Judgment, paras 269–274).
Fayia Musa	Fayia Musa was a "prominent member" of the RUF and was made Agri-Officer by Foday Sankoh. He was part of the RUF External Delegation that Sankoh sent to Côte d'Ivoire in 1995 to negotiate a peace deal and served as RUF spokesman. (Trial Judgment, paras 766. 2511, fn. 5392, 2546, fn. 5515, 2557, 6772 fn. 15286). Defence Witness. Credibility assessment: Trial Judgment, para. 2557.
Solomon Anthony Joseph Musa a.k.a. SAJ Musa	SAJ Musa was a senior AFRC commander and served as Acting Vice-Chairman of the Supreme Council in Foday Sankoh's absence. After Johnny Paul Koroma appointed Sam Bockarie as Chief of Defence Staff, giving Bockarie overall authority over the combined and restructured RUF/AFRC forces, SAJ Musa disputed Bockarie's command and eventually led a breakaway group of predominantly AFRC troops to Koinadugu District. On 23 December 1998, SAJ Musa died at Benguema outside Freetown. (Trial Judgment, paras 54, 57, 6750).
Albert Saidu	Albert Saidu was an RUF adjutant from 1991 to 2001. He was promoted in November 1998. (Trial Judgment, paras 2384, 2467, 5441). Prosecution witness. Credibility assessment: Trial Judgment, para. 2384.
Alimamy Bobson Sesay a.k.a. Bobby, Pastor Bobson and Pastor Yapo Sesay	Alimamy Bobson Sesay was an AFRC member and officer. Shortly after the coup, he was assigned to Bomb Blast as a Military Transport Officer and security guard. After the ECOMOG Intervention, Bobson Sesay moved to northern Sierra Leone as a combatant under the command of Gullit. While he was promoted a number of times, he never held a rank higher than Captain. After the Freetown invasion he served as an aide-de-camp and personal bodyguard to Bomb Blast, until he was arrested on 6 June 2000. (Trial Judgment, para. 285). Prosecution witness. Credibility assessment: Trial Judgment, paras 285–289.
Varmuyan Sherif	Varmuyan Sherif was a former ULIMO-K fighter who was the Assistant Director of Operations for Taylor's SSS at the Executive Mansion in Monrovia from 1997 until the end of 1999. (Trial Judgment, paras 2590, 3674, 5447). Prosecution witness. Credibility assessment: Trial Judgment, para. 5324.
TF1-371	TF1-371 was a RUF commander. Prosecution witness. Credibility assessment: Trial Judgment, paras 220–226.
John Vincent a.k.a. Stone One	John Vincent was a Liberian NPFL recruit and later RUF Vanguard commander. He was an RUF member between 1990 and 2000, where he served as overall training commander and attained the rank of Colonel. Vincent then became a member of the AFL in 2001 before being recruited to the SSS in 2002. (Trial Judgment, para. 2294, 3648, 4464). Defence witness. Credibility assessment: Trial Judgment, paras 4464–4465.
Radio Operators:	
Dauda Aruna Fornie	Dauda Aruna Fornie was an RUF radio operator who in 1998, relocated to Buedu, where he travelled with Sam Bockarie on a number of trips to Liberia. In 1999, Fornie accompanied the RUF/AFRC delegation to the Peace Talks in Lomé and other cities. He was imprisoned and tortured by Bockarie for his allegiance to Sankoh, and by the end of the war, Fornie was in Pendembu. (Trial Judgment, para. 346). Prosecution witness. Credibility assessment: Trial Judgment, paras 346–358.

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Name	Role in Conflict
Mohamed Kabbah	Mohamed Kabbah was an RUF radio operator. During the conflict, Mohamed Kabbah worked at various locations as a radio operator for the RUF. (Trial Judgment, para. 334). Prosecution witness: Credibility assessment: Trial Judgment, paras 334–338.
Perry Kamara	Perry Kamara was an RUF member and radio operator with the codename "System." Before the AFRC coup, Perry Kamara worked for a number of RUF commanders including Foday Sankoh, Issa Sesay and Isaac Mongor. During the Junta Period, Perry Kamara served in Makeni as the overall signal commander, moving briefly to Koidu Town and then Superman Ground after the ECOMOG Intervention. Around September 1998 he testified that he was sent by Morris Kallon to join Gullit in Rosos and participated in the Freetown Invasion. From 1999 until disarmament, Perry Kamara was based in Kono. (Trial Judgment, para. 227). Prosecution witness. Credibility assessment: Trial Judgment, paras 227–236.
Foday Lansana a.k.a. CO Nya	Foday Lansana was an RUF radio operator. He was born in Liberia, joined the NPFL in February or March 1990 and that same year was trained as a radio operator. He went to Sierra Leone in 1991 or 1992 to train RUF fighters in radio communication and stayed in Sierra Leone. In 1992, after Operation Top Final, he assumed a senior role within the RUF. He worked in a number of locations during the Indictment Period, including for Superman in the North in mid to late 1998 (Trial Judgment, paras 32, 237, 1751, 2902, 3233, 3397, 3622, 3665, 4250). Prosecution witness: Credibility assessment: Trial Judgment, paras 237–243.
Alice Pyne	Alice Pyne was an RUF radio operator. She testified that throughout her time with the RUF she was a radio operator working in a number of locations and for various RUF members, including Superman. (Trial Judgment, paras 304, 3396, 3275, 3466). Prosecution witness. Credibility assessment: Trial Judgment, paras 304–307.

B. Associates and Subordinates of Charles Taylor

Name	Role in Conflict
Ibrahim Bah	In the early 1990s Ibrahim Bah was a member of the NPFL. He was a trusted emissary who represented the RUF at times and Taylor at times, and served as a liaison between them at times. He was a businessman who helped arrange arms and diamond transactions, and did not maintain an ongoing affiliation as a subordinate or agent with either the RUF or Taylor. At times, however, he did represent the RUF and Taylor in specific transactions or on specific missions. (Trial Judgment, paras 2744, 2752).
Musa Cissé	Musa Cissé was Taylor's Chief of Protocol. (Trial Judgment, paras 5447, fn. 12145, 5841, 6183, fn. 14009, 6188).
Joseph Marzah a.k.a. Zigzag	Joseph Marzah was a member of the SSS who worked for Taylor. (Trial Judgment, para. 263, 265, 4943, fn. 10950). Prosecution witness: Credibility assessment: Trial Judgment, paras 263–268.
Dopoe Menkarzon	Dopoe Menkarzon was among the NPFL commanders sent to Sierra Leone as reinforcements by Taylor in about June 1991. He was among the Liberians who, from 1998 to 2001, brought supplies of military equipment into Sierra Leone from Taylor. (Trial Judgment, paras 2380, 4943, 5163.)
Daniel Tamba a.k.a. Jungle	Daniel Tamba worked for the SSS as a subordinate of Benjamin Yeaten and Taylor and served as a courier of arms, diamonds and messages back and forth between the RUF/AFRC and Taylor throughout the Indictment Period. (Trial Judgment, paras 2702–2717, 2718).
Sampson Weah	The evidence indicates that Sampson Weah was a member of the SSS working under the direction of Yeaten. (Trial Judgment, para. 4943, fn. 10951).

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Name	Role in Conflict
Benjamin Yeaten	Benjamin Yeaten served as Deputy Director of the SSS of the Government of Liberia from 1995 to 1997. After Taylor's election as President, Yeaten became Director of the SSS. He was promoted to Deputy Chairman of the Joint Chiefs of Staff in around 2000, putting him in charge of the generals of the Liberian armed forces for combat taking place in Liberia. (Trial Judgment, para. 2571).

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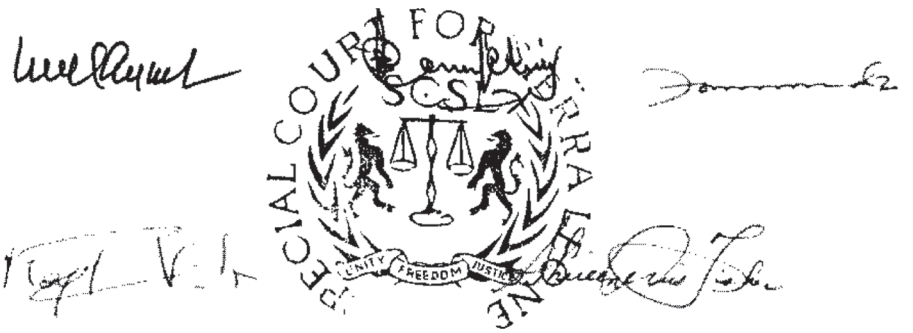

The Appeals Chamber thanks its staff for their dedication and support in the preparation of this final Appeal Judgment of the Special Court for Sierra Leone: Rhoda Kargbo and Kevin Hughes; Jennifer Beoku Betts; Rafael del Castillo e Melo Silva; Kamran Chaudhry; Laura Murdoch; Gaia Pergola; Jesenka Residovic; Melissa Ruggiero; Hannah Tonkin; Hamidu Barrie; Josephine Buck.

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ENDNOTES

1 S.C. Res. 1315 (2000).

2 Statute, Art. 2-5.

3 Trial Judgment, para. 3.

4 Trial Judgment, para. 4.

5 Trial Judgment, para. 7.

6 Trial Judgment, para. 7.

7 Trial Judgment, para. 8.

8 *Taylor* Decision Approving the Indictment and Order for Non-Disclosure; *Taylor* Warrant of Arrest and Order for Transfer and Detention.

9 *Taylor* Order for Disclosure and Decision Approving the Indictment and Order for Non-Disclosure.

10 Trial Judgment, para. 9.

11 Trial Judgment, paras 9, 10.

12 *Taylor* Decision on Prosecution's Application to Amend Indictment and on Approval of Amended Indictment.

13 *Taylor* Second Amended Indictment.

14 Transcript, 3 April 2006, p. 14; Transcript, 3 July 2007, pp. 401, 402.

15 Trial Judgment, para. 573.

16 Trial Judgment, para. 559. *See* also Trial Judgment, paras 552, 558.

17 Trial Judgment, para. 6994. Article 6(1) provides: "A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime."

18 Trial Judgment, para. 6994.

19 Trial Judgment, para. 6986. Article 6(3) provides: "The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof."

20 Sentencing Judgment, Disposition.

21 Taylor Notice of Appeal; Prosecution Notice of Appeal.

22 Taylor Appeal, para. 318, fn. 642.

23 *See* Taylor Appeal Brief, Table of Contents.

24 Grounds 1-5.

25 Grounds 6-15. Ground 6 is labeled a "general" error, Grounds 7-13 are labeled errors related to the *actus reus*, and Grounds 14 and 15 are labeled errors related to the *mens rea*.

26 Grounds 16-34. Grounds 16-20 are labeled errors related to the *mens rea*. Grounds 21-34 are labeled errors related to the *actus reus*.

27 Grounds 36-39.

28 Ground 40.

29 Ground 41, which relates to "impermissible cumulative convictions for rape and sexual slavery."

30 Grounds 42-45.

31 Grounds 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 23, 24, 25, 26, 27, 28, 29, 30, 40. These challenges are addressed in Section IV of this Appeal Judgment, entitled "The Evaluation of Evidence".

32 This challenge is addressed in Section V of this Appeal Judgment, entitled "The RUF/AFRC's Operational Strategy".

33 These challenges are addressed in Section VII of this Appeal Judgment, entitled "The Law of Individual Criminal Liability".

34 These challenges are addressed in Section VIII of this Appeal Judgment, entitled "Taylor's Criminal Liability".

35 These challenges are addressed in Section IX of this Appeal Judgment, entitled "Fair Trial Rights and the Judicial Process".

36 These challenges are addressed in Section X of this Appeal Judgment, entitled "The Sentence".

37 These challenges are addressed in Section VIII of this Appeal Judgment, entitled "Taylor's Criminal Liability".

38 This challenge is addressed in Section III of this Appeal Judgment, entitled "The Indictment".

39 These challenges are addressed in Section X of this Appeal Judgment, entitled "The Sentence".

40 *Sesay et al.* Appeal Judgment, para. 31. *See* also Practice Direction on Structure of Grounds of Appeal, para. 3.

41 *Norman et al*. Subpoena Decision, para. 7; *Sesay et al.* Appeal Judgment, para. 31.

42 *Sesay et al.* Appeal Judgment, para. 345, *citing Krajišnik* Appeal Judgment, para. 139, *Kvočka et al.* Appeal Judgment, para. 25.

43 *Sesay et al*. Appeal Judgment, para. 32; *Fofana and Kondewa* Appeal Judgment, para. 33.

44 *Sesay et al*. Appeal Judgment, para. 32; *Fofana and Kondewa* Appeal Judgment, para. 33.

45 *Sesay et al.* Appeal Judgment, para. 32, *quoting Kupreškić et al*. Appeal Judgment, para. 30; *Fofana and Kondewa* Appeal Judgment, para. 34.

46 *Sesay et al.* Appeal Judgment, para. 32; *Fofana and Kondewa* Appeal Judgment, para. 33.

47 *Sesay et al*. Appeal Judgment, para. 32. *See* also *Strugar* Appeal Judgment, para. 13; *Orić* Appeal Judgment, para. 10; *Hadžihasanović and Kubura* Appeal Judgment, para. 10; *Limaj et al*. Appeal Judgment, para. 12; *Blagojević and Jokić* Appeal Judgment, para. 226; *Brđanin* Appeal Judgment, para. 13; *Galić* Appeal Judgment, para. 9; *Stakić* Appeal Judgment, para. 220; *Čelebići* Appeal Judgment, para. 458.

48 *Sesay et al*. Appeal Judgment, para. 33. Considering that it is the Prosecution that bears the burden at trial of proving the guilt of the accused beyond a reasonable doubt, the significance of an error of fact occasioning a miscarriage of justice is somewhat different for a Prosecution appeal against acquittal than for a Defence appeal against conviction. A convicted person must show that the Trial Chamber's factual

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errors create a reasonable doubt as to his guilt. The Prosecution must show that, when account is taken of the errors of fact committed by the Trial Chamber, all reasonable doubt of the accused's guilt has been eliminated. *Sesay et al*. Appeal Judgment, para. 33, *citing Muvunyi* Appeal Judgment, para. 10, *Mrkšić and Šljivančanin* Appeal Judgment para. 16, *Martić* Appeal Judgment, para. 12.

49 *Sesay et al.* Appeal Judgment, para. 32; *Fofana and Kondewa* Appeal Judgment, para. 33.

50 *Sesay et al*. Appeal Judgment, para. 32. *See* also Practice Direction on Structure of Grounds of Appeal, para. 4.

51 *Sesay et al*. Appeal Judgment, para. 32, *quoting Kupreškić et al*. Appeal Judgment, para. 29.

52 *Sesay et al*. Appeal Judgment, para. 32, *quoting Kupreškić et al*. Appeal Judgment, para. 29.

53 *Sesay et al*. Appeal Judgment, para. 34; *Fofana and Kondewa* Appeal Judgment, para. 35. *See* also Practice Direction on Structure of Grounds of Appeal, para. 2.

54 *Sesay et al*. Appeal Judgment, para. 34; *Fofana and Kondewa* Appeal Judgment, para. 35.

55 *Sesay et al*. Appeal Judgment, para. 35; *Norman et al*. Subpoena Decision, para. 5.

56 *Sesay et al*. Appeal Judgment, para. 35; *Norman et al*. Subpoena Decision, paras 5, 6. *See* also Practice Direction on Structure of Grounds of Appeal, para. 5.

57 *Sesay et al.* Appeal Judgment, para. 1202; *Fofana and Kondewa* Appeal Judgment, para. 466.

58 *Sesay et al.* Appeal Judgment, para. 1202; *Fofana and Kondewa* Appeal Judgment, para. 466; *Brima et al.* Appeal Judgment, para. 309.

59 *Sesay et al.* Appeal Judgment, paras 1202, 1203; *Fofana and Kondewa* Appeal Judgment, paras 466, 467; *Brima et al.* Appeal Judgment, para. 309.

60 *Sesay et al.* Appeal Judgment, para. 36. The Appeals Chamber has previously discussed in detail many of the types of deficient submissions that may be summarily dismissed without reasoning. *Sesay et al.* Appeal Judgment, paras 37-44.

61 Prosecution Appeal, Ground 3.

62 Trial Judgment, paras 114-119.

63 Bombali, Kailahun, Kenema, Kono and Port Loko Districts.

64 Sexual slavery, enslavement and the enlistment, conscription and use of child soldiers in Counts 5, 9 and 10.

65 Trial Judgment, paras 117, 119. The Trial Chamber noted, however, that the Prosecution had not been consistent with regard to its pleading of the locations of crimes in Freetown and the Western Area and crimes of a continuous nature.

66 Trial Judgment, para. 112.

67 Trial Judgment, para. 115, *citing Brima et al.* Trial Judgment, para. 37, *Kamara* Decision on Form of Indictment, para. 42, *Brđanin* Trial Judgment, para. 397; *Brđanin* Decision on Motion for Acquittal, para. 88, *Stakić* Trial Judgment, para. 772.

68 Trial Judgment, paras 114, 115, *citing Brima et al.* Appeal Judgment, para. 64, *Brima et al.* Trial Judgment, para. 37.

69 *See, e.g.,* Trial Judgment, paras 631, 642, 702, 748, 934, 1202, 1234, 1263, 1880, 1911, 1918 and 2054.

70 Prosecution Appeal, para. 103.

71 Prosecution Appeal, paras 103, 109, 110, 113, 114, *citing Sesay et al.* Appeal Judgment, paras 48, 52, 830, 831, 883-887, 901-904, 938, 939.

72 Prosecution Appeal, paras 112, 115-117.

73 Prosecution Appeal, para. 108.

74 Prosecution Appeal, paras 105 and 119-121. The Prosecution argues that any defects were cured in paras 124-173 of its Appeal.

75 Prosecution Appeal, para. 103.

76 Prosecution Appeal, paras 104, 174 and 182.

77 Taylor Response, para. 82.

78 Taylor Response, para. 80, *quoting Blaškić* Appeal Judgment, para. 213.

79 Taylor Response, para. 80, *quoting Kupreškić et al.* Appeal Judgment, para. 92.

80 Taylor Response, para. 84, *citing Sesay et al.* Appeal Judgment, para. 52.

81 Taylor Response, para. 85.

82 Taylor Response, para. 86.

83 Taylor Response, paras 98, 99, *quoting Brima et al.* Appeal Judgment, paras 44, 50, 64.

84 Taylor Response, paras 93-116.

85 Prosecution Reply, para. 57.

86 Prosecution Reply, paras 59, 66.

87 Prosecution Reply, paras 62, 63.

88 Prosecution Appeal, paras 103, 114.

89 *Sesay et al.* Appeal Judgment, para. 832 ("This distinction between the specificity requirements for the pleading of locations in relation to different [forms of criminal participation] is consistent with our holding in the *Brima et al.* Appeal Judgment."). *Compare Sesay et al.* Appeal Judgment, para. 60 ("In the Trial Chamber's view, it had to 'balance practical considerations relating to the nature of the evidence against the need to ensure that an Indictment is sufficiently specific to allow an accused to fully present his defence.' Sesay has not shown an error in the Trial Chamber's application of the law in this regard.") *and Brima et al.* Appeal Judgment, para. 64 ("The Trial Chamber's limited treatment of the evidence of crimes committed in such locations was a proper exercise of its discretion in the interest of justice, taking into account that it is the Prosecution's obligation to plead clearly material facts it intends to prove, so as to afford the [accused] a fair trial.").

90 The Trial Chamber reasonably considered that pleading locations "throughout" a district does not plead a specific location; it distinguished in this respect between districts and Freetown and the Western Area. Trial Judgment, para. 117. *Contra* Prosecution Appeal, para. 108.

91 *Sesay et al*. Appeal Judgment, para. 52; *Brima et al.* Appeal Judgment, para. 41 (both holding, "*In some cases*, the widespread nature and sheer scale of crimes make it *unnecessary and impracticable* to require a high degree of specificity.") (emphasis added). *See* also *Sesay et al.* Appeal Judgment, paras 887, 904, 939 (affirming the Trial Chamber's findings that non-exhaustive pleadings of acts of burning, acts of physical violence and acts of pillage were adequate).

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92 *Brima et al.* Appeal Judgment, para. 64. *See* also *Sesay et al.* Appeal Judgment, para. 836 (finding that non-exhaustive pleading of murder in Kono District was defective).

93 *See Sesay et al*. Appeal Judgment, para. 60; *Brima et al.* Appeal Judgment, para. 64. *See* also *Sesay et al.* Appeal Judgment, paras 887, 904, 939 (recalling that there was no error in the Trial Chamber's general approach to applying the "sheer scale" exception).

94 Article 17 of the Statute; *Sesay et al.* Appeal Judgment, para. 60; *Brima et al.* Appeal Judgment, para. 64.

95 *Sesay et al.* Appeal Judgment, para. 47; *Brima et al.* Appeal Judgment, para. 37, *citing Kvočka et al.* Form of the Indictment Decision, para. 14.

96 *Sesay et al.* Appeal Judgment, paras 48, 830; *Brima et al.* Appeal Judgment, para. 37, *citing Kupreškić et al.* Appeal Judgment, para. 89.

97 *Brima et al.* Appeal Judgment, para. 64.

98 While the Prosecution submits that the Defence did not specifically object to the pleading of locations during trial, the Appeals Chamber held in *Brima et al.* that a Trial Chamber may safeguard the fairness of the proceedings and assess the sufficiency of the pleadings in the indictment, regardless of whether the accused specifically objected to the pleading. *Brima et al.* Appeal Judgment, paras 62-64. *See* also *Brima et al.* Appeal Judgment, paras 53, 56. In this regard, it should be recalled that failure to object to the form of an indictment during the trial or challenge to the admissibility of evidence of material facts not pleaded in the indictment does not necessarily waive the right to make such challenges on appeal. *Sesay et al.* Appeal Judgment, para. 54; *Brima et al.* Appeal Judgment, para. 43.

99 *Kvočka et al.* Appeal Judgment, para. 30. *See* also *Ntakirutimana* Appeal Judgment, para. 74 ("The Prosecution cannot simultaneously argue that the accused killed a named individual yet claim that the 'sheer scale' of the crime made it impossible to identify that individual in the Indictment."); *Kupreškić et al.* Appeal Judgment, paras 90 ("In such a case the Prosecution need not specify every single victim that has been killed or expelled in order to meet its obligation of specifying the material facts of the case in the indictment. Nevertheless, since the identity of the victim is information that is valuable to the preparation of the defence case, if the Prosecution is in a position to name the victims, it should do so."), 92 ("It is of course possible that an indictment may not plead the material facts with the requisite degree of specificity because the necessary information is not in the Prosecution's possession. However, in such a situation, doubt must arise as to whether it is fair to the accused for the trial to proceed.").

100 *See Kupreškić et al.* Appeal Judgment, para. 92. *See* also *Sesay et al.* Trial Judgment, para. 331; *Brima et al.* Trial Judgment, para. 80.

101 The Prosecution amended the initial Indictment twice, on 16 March 2006 and 29 May 2007. The Prosecution closed its case in *Brima et al.* on 21 November 2005.

102 Prosecution Appeal, paras 105 and 119-121.

103 Rules 47-53; *Sesay et al.* Appeal Judgment, para. 149.

104 *Sesay et al.* Appeal Judgment, para. 47; *Brima et al*. Appeal Judgment, para. 37.

105 Statute, Article 17(4)(a), (b).

106 *Sesay et al.* Appeal Judgment, para. 55; *Brima et al*. Appeal Judgment, para. 44.

107 *But cf. Ntagerura et al.* Appeal Judgment, paras 50-65. The specific circumstances of a proceeding may be such that the interests of justice strongly favour an assessment of whether defective pleadings were cured.

108 Taylor Notice of Appeal, Grounds 1, 2, 3, 4 and 5, as well as Ground 40 in Section V of the Notice of Appeal.

109 Taylor Appeal, Ground 6.

110 Taylor Appeal, Grounds 7, 8, 9, 10, 12, 13, 15, 23, 24, 25, 26, 27, 28, 29, 30.

111 *See supra* paras 15-17.

112 Taylor Appeal, Grounds 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 23, 24, 25, 26, 27, 28, 29, 30, 40.

113 Taylor Appeal, Ground 1 ("The Trial Chamber erred in law by relying on uncorroborated hearsay evidence as the sole basis for specific incriminating findings of fact."). *See* also Taylor Appeal, para. 32 ("The Chamber frequently applies an erroneous notion of 'corroboration.'").

114 Taylor Appeal, Grounds 6 (part), 7, 8 (part), 9, 10 (part), 12 (part), 13 (part) and 15 (part).

115 Taylor Appeal, Grounds 23 (part), 24 (part), 25 (part), 26 (part), 27 (part), 28 (part), 29 (part) and 30 (part).

116 Taylor Appeal, Ground 6.

117 Taylor Appeal, paras 179 (Ground 8), 160, 164-168 (Ground 9), 236 (Ground 12), 264-266 (Ground 13), 303, 310-311 (Ground 15).

118 Prosecution Response, para. 5.

119 Prosecution Response, para. 5.

120 Prosecution Response, para. 11.

121 Prosecution Response, para. 14.

122 Prosecution Response, para. 22.

123 Prosecution Response, paras 27, 38, 39, 700, 701.

124 Prosecution Response, para. 32.

125 Prosecution Response, paras 57, 272.

126 Prosecution Response, para. 58.

127 Prosecution Response, para. 273.

128 Prosecution Response, para. 273.

129 Prosecution Response, para. 59.

130 Prosecution Response, para. 4.

131 Prosecution Response, para. 4.

132 Prosecution Response, para. 58.

133 Taylor Appeal, Grounds 6, 7, 8, 9, 10, 12, 13, 15, 23, 24, 25, 26, 27, 28, 29, 30.

134 *See, e.g.*, Ground 23, where the Defence challenges in one Ground: (i) the Trial Chamber's factual findings as to Taylor's acts and conduct; (ii) the Trial Chamber's finding as to the criminal use of materiel supplied by Taylor: (iii) the Trial Chamber's application of the law on the *actus reus* of aiding and abetting liability to the provision of arms and ammunition; and (iv) the Trial Chamber's ultimate conclusion that the facts found establish the *actus reus* elements of aiding and abetting liability beyond a reasonable doubt.

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135 Practice Direction on the Structure of Grounds of Appeal, paras 7 ("The Appellant shall not group disparate arguments, each pertaining to a substantial issue, under a single ground of appeal.") and 8 ("The Appellant shall not group allegations of error or misdirection relating to disparate issues under a single ground of appeal.").

136 Practice Direction on the Structure of Grounds of Appeal, para. 29.

137 Prosecution Response, para. 4.

138 Practice Direction on the Structure of Grounds of Appeal, paras 9 ("The Appellant shall not repeat in a disproportionate manner, the same arguments in numerous grounds of appeal.") and 10 ("The Appellant shall present a holistic and comprehensive ground of appeal."). These challenges could be summarily dismissed on this basis alone. Practice Direction on the Structure of Grounds of Appeal, para. 29.

139 Prosecution Response, paras 383, 620.

140 That is, the Grounds in which evidentiary challenges are made but for which there was nothing in the Notice of Appeal or in the wording of the title of the Ground that would suggest that there were multiple challenges in each Ground, including challenges to the Trial Chamber's assessment of the evidence. Taylor Appeal, Grounds 6, 7, 8, 9, 10, 12, 13, 15, 23, 24, 25, 26, 27, 28, 29, 30.

141 *See* Trial Judgment, para. 162. The Trial Chamber considered five categories of evidence: (i) oral evidence, (ii) documentary evidence, including such evidence provided in lieu of oral testimony pursuant to Rule 92 *bis,* and evidence admitted pursuant to Rule 92*quater*, (iii) testimony of expert witnesses, (iv) facts of which judicial notice was taken and (v) facts agreed upon by the Parties.

142 Taylor Appeal, para. 34.

143 Prosecution Response, para. 4.

144 *See, e.g.*, Prosecution Response, paras 76 ("[a]ll of the arguments Taylor advances are simply inappropriate attempts to relitigate arguments reasonably rejected at trial. At no time does Taylor address the standard for appellate review and identify why the Trial Chamber's findings are unreasonable or wholly erroneous."), 162 (challenges are "without merit because they fail to establish that no reasonable trier of fact could have reached the same conclusion. Indeed, many of his arguments are simply inappropriate attempts to relitigate arguments made and reasonably rejected at trial. Further, the reference in the Taylor Notice of Appeal that '[t]he Trial Chamber's error arises from an improper evaluation of the evidence' is not developed in his appeal brief."), 169 ("Taylor's first example, which relies on Gullit's failure to follow Bockarie's instruction and wait for reinforcements, should be dismissed as it fails to address in any way why the Trial Chamber was unreasonable to conclude that Gullit's act was borne of military necessity rather than insubordination."), 172 (the "fourth example relied on by Taylor concerning Exhibit P-067 is again a rehash of an argument rejected by the Trial Chamber. It should be dismissed because no argument is advanced as to why the Trial Chamber's approach was unreasonable."), 207 (the submissions "simply attempt to relitigate the unsuccessful position he put forward at trial."), 222 (arguments "should . . . be dismissed because they fail to explain why no reasonable trier of fact, based on the evidence, could have evaluated the evidence as the Trial Chamber did."), 227 (argument "is effectively an attempt to substitute alternative interpretations of the evidence. As this Chamber observed in *RUF,* 'claims that the Trial Chamber . . . should have interpreted evidence in a particular manner, are liable to be summarily dismissed.'"), 230 ("submissions are, in large part, inappropriate attempts to relitigate arguments made and rejected at trial and to substitute alternative interpretations of the evidence . . . [A]t no time does Taylor address the standard for appellate review and identify why the Trial Chamber's findings are unreasonable or wholly erroneous."), 232 (submissions "simply argue that various witnesses' testimony should have been interpreted in a different manner. The appellate standards of review are not satisfied as Taylor does not address why no reasonable trier of fact, based on the evidence, could have reached the conclusion the Trial Chamber did."), 369 ("Taylor merely seeks to relitigate issues decided against him and to substitute his characterisation of the facts for that of the Trial Chamber. He fails to establish any error warranting Appellate intervention."), 383 ("the submissions fail to identify the challenged factual finding/s and the prejudice caused."), 620 ("the submissions contain irrelevant comments and self-serving mischaracterisations of the Chamber's findings, attempt to relitigate facts, fail to identify the challenged factual finding/s and the prejudice caused, and disproportionately repeat other Defence submissions.").

145 *See, e.g.,* Taylor Appeal, paras 133, 138, 145, 146-148 (Ground 7), 173, 177, 178, 180 (Ground 8), 187, 188 (Ground 10), 223, 249-251 (Ground 12), 486, 491, 492, 493, 504, 505, 506, 510, 522, 524, 526, 529, 541, 544, 550, 556, 575, 578 (Ground 23), 592, 597 (Ground 24), 626, 627, 628, 629, 631, 635, 637, 638 (Ground 26) , 670-672 (Ground 29).

146 The Defence on appeal does not raise any issue regarding the admission by the Trial Chamber of any evidence. Indeed, as has already been established by this Court, "[t]he Appeals Chamber is of the view that the right to a fair trial enshrined in Article 17 of the Statute cannot be violated by the introduction of evidence relevant to any allegation in the trial proceedings, regardless of the nature or severity of the evidence." Rather, the Defence challenges the evaluation of evidence by the Trial Chamber on several grounds set out below.

147 *But cf.* ICTY RoPE, Rule 89(C); ICTR RoPE, Rule 89(C); STL RoPE, Rule 149(C) (requiring that evidence must be relevant and have probative value to be admitted).

148 *Accord Aleksovski* Appeal Decision on Admissibility of Evidence, para. 19 ("[T]here is no reason to import such [elaborate national] rules into the practice of the Tribunal, which is not bound by national rules of evidence. The purpose of the Rules is to promote a fair and expeditious trial, and Trial Chambers must have the flexibility to achieve this goal."); *Boškoski and Tarčulovski* Appeal Judgment, para. 193 ("the Tribunal's jurisprudence confirms that evidence inadmissible under domestic law is not necessarily inadmissible in proceedings before the Tribunal"). *See* also UNWCC Law Reports, *The Procedure of the Courts*, pp 190, 197 ("In general the rules of evidence applied in War Crime trials are less technical than those governing the proceedings of courts conducting trials in accordance with the ordinary criminal laws of states. This is not to say that any unfairness is done to the accused; the aim has been to ensure that no guilty person will escape punishment by exploiting technical rules. The circumstances in which war crime trials are often held make it necessary to dispense with certain such rules. For instance many eye witnesses whose evidence was needed in trials in Europe had in the meantime returned to their homes overseas and been demobilized. To transport them to the scene of trial would not have been practicable, and it was for that reason that affidavit evidence was

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permitted and so widely used. In the *Belsen* Trial, the Prosecutor pointed out that although the trial was held under British law, the Regulations had made certain alterations in the laws of evidence for the obvious reason that otherwise many people would be bound to escape justice because of movements of witnesses."). The UNWCC Law Reports *The Procedure of the Courts* extensively discusses the law of evidence applied consistent with the fair trial rights of the accused.

149 Taylor Appeal, para. 23.

150 Taylor Appeal, para. 24.

151 Taylor Appeal, para. 34.

152 Taylor Appeal, paras 30, 34, 35, *citing* Trial Judgment, paras 166 and 199.

153 Prosecution Response, para. 19.

154 Prosecution Response, para. 11.

155 Taylor Appeal, paras 30, 32, 34, 35, *citing* Trial Judgment, paras 166 and 199.

156 See, for example, the United Kingdom, in which s 34(2) of the Criminal Justice Act of 1988 and s 32(1) of the Criminal Justice and Public Order Act 1994 abolished the technical definition of corroboration and need for corroboration for certain classes of witnesses. Previously, the testimony of children, accomplices and victims of sexual assault needed corroboration, by which was meant evidence from an independent source that implicated the accused in the specific offense. After 1994, "corroboration" merely referred to evidentiary support of any kind and was no longer a requirement for any particular class of witness.

157 *Sesay et al*. Appeal Judgment, para. 522, *citing Brima et al*. Appeal Judgment, para. 147; ICC RoPE, Rule 64(4) (providing that there shall be no legal requirement for corroboration to prove any crime over which it exercises jurisdiction); *Tadić* Appeal Judgment, para. 65 ("The Appeals Chamber notes that it has been the practice of this Tribunal and of the International Criminal Tribunal for Rwanda to accept as evidence the testimony of a single witness on a material fact without need for corroboration."); *Kayishema and Ruzindana* Appeal Judgment, para. 154 ("the Appeals Chamber concurs with the opinion of ICTY Appeals Chamber that the testimony of a witness on a material fact may be accepted as evidence without the need for corroboration.").

158 *Testis unus testis nullus*.

159 *Rohde* Case, p. 58. In the *Stalag Luft III* Case, both the Prosecutor and the Judge Advocate "warned the court of the danger of acting on the uncorroborated testimony of an accomplice, but added that the court *could* convict on such evidence *if they were satisfied that the evidence given was true*." *Stalag Luft III* Case, p. 51 (emphasis added). As the UNWCC Law Reports noted: "The material here referred to often illustrates further the policy of leaving wide discretionary powers in the hands of the Courts, as does also for instance the rule generally followed as regards the pleas of superior orders and of alleged legality or compulsion under municipal law. This provision of a wide discretion to the courts is an aspect of the attempt to exclude from war crime trial proceedings such unnecessary technicalities as might lead to a miscarriage of justice in favour of the accused; this tendency has been demonstrated also in certain provisions that a trial cannot be invalidated after its completion merely because of technical faults of procedure which caused no injustice to the accused. It need hardly be added that the courts have often worked upon circumstantial evidence as well as upon direct evidence; this has been of particular interest in connection with questions turning upon an accused's knowledge of certain activities or of the criminality of certain activities or organizations." UNWCC Law Reports, *The Procedure of the Courts*, p. 199, n. 2.

160 *General Tomoyuki Yamashita* Case, pp. 23, 61.

161 *General Tomoyuki Yamashita* Case, pp. 23, 61.

162 *Fofana and Kondewa* Appeal Judgment, para. 199. *See* also, *Haradinaj et al.* Appeal Judgment, para. 219 and the references cited therein; *D. Milošević* Appeal Judgment, para. 215 and the references cited therein; *Mrkšić and Šljivančanin* Appeal Judgment, para. 264 and the references cited therein; *Kordić and Čerkez* Appeal Judgment, para. 274 and references cited therein; *Kunarac et al*. Appeal Judgment, para. 268; *Kupreškić et al*. Appeal Judgment, para. 33 and the references given therein; *Aleksovski* Appeal Judgment, para. 62; *Rutaganda* Appeal Judgment, para. 493; *Bagilishema* Appeal Judgment, para. 79; *Rohde* Case, pp. 58–59.

163 *Tadić* Appeal Judgment, para. 65.

164 *Tadić* Appeal Judgment, para. 57.

165 *Tadić* Appeal Judgment, paras 65, 66.

166 *Tadić* Appeal Judgment, para. 64.

167 *Furundžija* Appeal Judgment, paras 100-108. *See* also *Furundžija* Trial Judgment, para. 66 ("The Prosecution case against the accused turns on the evidence of Witness A, and to a lesser extent, Witness D.").

168 *Sesay et al.* Appeal Judgment, para. 221.

169 *Brima et al*. Appeal Judgment, para. 128.

170 *Sesay et al*. Appeal Judgment, para. 522, *citing Brima et al*. Appeal Judgment, para. 147.

171 The Defence faults the Trial Chamber for failing to define "corroboration" as a matter of law. Taylor Appeal, para. 34. However, its only reference to any legal definition is taken without context from the ICTR Appeals Chamber and is unsupported by other jurisprudence. The ICTR Appeals Chamber in *Nahimana et al.* itself did not support its definition by reference to any authorities. *See Nahimana et al.* Appeal Judgment, para. 428.

172 *See, e.g., Sesay et al.* Appeal Judgment, paras 941, 942; *Sesay et al.* Appeal Judgment, para. 813 and fn. 2132; *Sesay et al.* Appeal Judgment, paras 756-758 and *Sesay et al.* Trial Judgment, paras 2226, 2227; *Brima et al. Appeal Judgment*, paras 156-159 and *Brima et al.* Trial Judgment, paras 584, 907-910; *Brima et al.* Appeal Judgment, paras 132-136 and *Brima et al.* Trial Judgment, paras 356-371; *Brima et al.* Trial Judgment, para. 845.

173 "Corroboration" is defined in Black's Law Dictionary as: "1. Confirmation or support by additional evidence or authority." Black's Law Dictionary (9th ed.), p. 397.

174 *Simba* Appeal Judgment, para. 24, *quoting Ntakirutimana* Appeal Judgment, para. 132.

175 *Ntawukulilyayo* Appeal Judgment, para. 21, *citing Karera* Appeal Judgment, para. 45; *Renzaho* Appeal Judgment, para. 556; *Nchamihigo* Appeal Judgment, para. 42; *Muvunyi* Appeal Judgment, para. 128.

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176 Taylor Appeal, paras 26 ("the trier of fact's reliance on . . . hearsay evidence to make a directly incriminating finding is an error law."), 29 (asserting that as a matter of law, when the evidence is based on hearsay, the testimony of a single witness on a material fact *requires* corroboration). *See* also Taylor Notice of Appeal, Ground 1 ("The Chamber erred in law by relying on uncorroborated hearsay evidence as the sole basis for specific incriminating findings of fact."). *But compare* Taylor Appeal, para. 24 ("The Chamber failed to recognize . . . that it is legally impermissible to base a *particular conviction* only on uncorroborated hearsay.") (emphasis added).

177 Prosecution Response, para. 18.

178 Taylor Appeal, para. 24. *But compare* Taylor Notice of Appeal, Ground 1 ("The Chamber erred in law by relying on uncorroborated hearsay evidence as the sole basis for *specific incriminating findings of fact*.") (emphasis added).

179 Taylor Appeal, para. 24, *citing Prlić et al.* Decision Relating to Admitting Transcript, para. 53 (emphasis added).

180 Taylor Appeal, para. 30.

181 Although the Defence has characterised its argument in terms of a prohibition against convictions based solely on uncorroborated hearsay, the Defence admits that in this case, no single piece of hearsay was the basis of any conviction, but rather it alleges that uncorroborated hearsay was the basis of "incriminating findings" which when taken together amounted to a conviction. The Defence further concedes that, "[s]tanding alone, it is difficult to pinpoint or it's difficult to expressly state that [the challenged hearsay statements] were the sole or decisive factors for a conviction . . ." Appeal transcript, 23 January 2013, p. 49994. Nonetheless, the Appeals Chamber has addressed the broader contention, because it encompasses the assertion regarding "incriminating findings". *See Prlić et al.* Decision Relating to Admitting Transcript, para. 53 ("when a *conviction* is based solely or in a decisive manner") (emphasis added); *Unterpertinger v. Austria*, para. 33 ("However, it is clear from the judgment of 4 June 1980 that the Court of Appeal *based the applicant's conviction* mainly on the statements made by Mrs. Unterpertinger and Miss Tappeiner to the police.") (emphasis added); *Lucà v. Italy*, para. 40 (finding a violation of Art. 6 "where a *conviction* is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined") (emphasis added).

182 Taylor Appeal, para. 25. The Defence also cited in its oral submissions to the United States Supreme Court's decision in *Crawford v. Washington*, 51 US 36 (2004). However, not only is that a decision of a domestic court applying its domestic constitution, but it is expressly not on point to the issue raised by the Defence here. To the contrary, *Crawford* only addressed the use of *ex parte* examinations and inquisitorial practices, not hearsay generally. The Supreme Court rejected the admission of *ex parte* evidence, even if reliable, on the ground that it contravenes the intention of the drafters of the 6th Amendment to the United States Constitution in 1789. The Court considered that the 6th Amendment was directed to prevent the use of inquisitorial practices in light of historical abuses in 16th and 17th century England, such as the trial of Sir Walter Raleigh. As the Court subsequently clearly held in *Davis v. Washington*, *Crawford* only applies to testimonial evidence, as "[i]t is the testimonial character of the statement that separates it from other hearsay that, [which] while subject to traditional limitations upon hearsay evidence, is not subject to the [6th Amendment]." *Davis v. Washington*, 547 US 813, 821 (2006). Needless to say, the Statute of the Special Court embodies the principle articulated in *Crawford* and *Davis*, as the accused under Article 17(4)(e) has the right "to examine, or have examined, the witnesses against him or her". Furthermore, under Article 17(2) the accused has the right to "a fair and public hearing", which ensures that an accused before the Special Court is protected from Star Chamber-like proceedings as took place in 16th and 17th century England. Finally, Rule 92*bis* provides that written statements and transcripts admitted in lieu of oral testimony may not go to proof of the acts and conduct of the accused. Further, as discussed further below in para. 85, fn. 189, *Crawford* detracts from the Defence's submission at para. 25 of its Appeal Brief that the principle articulated in the *Prlić et al.* Decision applies equally to all hearsay evidence, as *Crawford* distinguishes between "testimonial" evidence and other hearsay evidence. *See* further *Giles v. California*, 128 S.Ct. 2678, 2691 n.6 (2008) (noting that admission of hearsay evidence from a co-conspirator does not violate the 6th Amendment because it is not "testimonial").

183 The ICTY Appeals Chamber held that the ECtHR had "authoritatively" stated the relevant principle and relied exclusively on ECtHR jurisprudence to articulate the scope of that principle. *Prlić et al.* Decision Relating to Admitting Transcript, para. 53, fns 91, 92.

184 *See, e.g., Prlić et al.* Decision Relating to Admitting Transcript, para. 53; *Martić* Decision on Evidence, paras 18-20.

185 *Compare* Statute, Article 17(4)(e) ("To examine, or have examined, the witnesses against him or her . . . ") *and* European Convention, Article 6(3)(d) ("To examine, or have examined, the witnesses against him or her . . ."). While the Appeals Chamber is not bound by the decisions of the ECtHR, it is notable that in interpreting identical language, the ECtHR has concluded that sole or decisive reliance on hearsay evidence does not abridge the accused's right to "examine, or have examined, the witnesses against him or her."

186 *See, e.g., Crawford v. Washington*, 51 US 36 (2004); *Davis v. Washington*, 547 U.S. 813 (2006); *Giles v. California*, 128 S.Ct. 2678 (2008); *Michigan v. Bryant*, 131 S. Ct. 1143 (2011).

187 The term "right of confrontation" as used in some discussions and submissions is derived from the 6th Amendment to the United States Constitution, which is described as the "Confrontation Clause". The Appeals Chamber recalls and emphasises that the Defence submission concerns international law, not domestic law.

188 *Al-Khawaja and Tahery v. UK*, para. 126. *See A.M v. Italy*, para. 25; *Saïdi v. France*, paras 43, 44; *Unterpertinger v. Austria*, paras 31-33.

189 *Al-Khawaja and Tahery v. UK*, para. 147. More particularly, the ECtHR only considered a particular specie of hearsay: "The Court notes that the present cases concern *only absent witnesses whose statements were read at trial*. It is not the Court's task to consider the operation of the common law rule against hearsay *in abstracto* nor to consider generally whether the exceptions to that rule which now exist in English criminal law are compatible with the Convention." *Al-Khawaja and Tahery v. UK*, para. 126 (emphasis added). This limited treatment is similar to the distinction drawn in *Crawford v. Washington*, 541 U.S. 36 (2004). While the Appeals Chamber has accepted *arguendo* the Defence

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submission that the principle involved applies equally to all hearsay, the Defence has not demonstrated that the jurisprudence demands a uniform approach. Indeed, the decisions of the US Supreme Court have long-held that hearsay evidence generally does not implicate the accused's right to confront witnesses against him or her. *See California v. Green*, 399 US 149, 155-156 (1970) ("While it may readily be conceded that hearsay rules and the Confrontation Clause are generally designed to protect similar values, it is quite a different thing to suggest that the overlap is complete, and that the Confrontation Clause is nothing more or less than a codification of the rules of hearsay and their exceptions as they existed historically at common law. *Our decisions have never established such a congruence*; indeed, we have more than once found a violation of confrontation values even though the statements in issue were admitted under an arguably recognized hearsay exception. The converse is equally true: merely because evidence is admitted in violation of a long-established hearsay rule does not lead to the automatic conclusion that confrontation rights have been denied.") (emphasis added) (internal citations omitted) (*confirmed by Dutton v. Evans*, 400 US 74 (1970)). More recently, following *Crawford*, the US Supreme Court confirmed that the constitutional right to confront witnesses applies only to a limited category of hearsay evidence. *See Davis v. Washington*, 547 U.S. 813 (2006); *Giles v. California*, 128 S.Ct. 2678 (2008); *Michigan v. Bryant*, 131 S. Ct. 1143, 1153 (2011) (holding that in *Crawford*, "*We therefore limited the Confrontation Clause's reach to testimonial statements* and held that in order for *testimonial evidence* to be admissible, the Sixth Amendment 'demands what the common law required: unavailability and a prior opportunity for cross-examination.'") (emphasis added). *See* also *Dutton v. Evans*, 400 US 74 (1970) (J. Harlan, concurring) ("Regardless of the interpretation one puts on the words of the Confrontation Clause, the clause is simply not well designed for taking into account the numerous factors that must be weighed in passing on the appropriateness of rules of evidence. . . . The task is far more appropriately performed under the aegis of the Fifth and Fourteenth Amendments' commands that federal and state trials, respectively, must be conducted in accordance with due process of law. It is by this standard that I would test federal and state rules of evidence.").

190 *Al-Khawaja and Tahery v. UK*, para. 147.

191 *Fofana and Kondewa* Appeal Judgment, para. 198.

192 *See Al-Khawaja and Tahery v. UK*, para. 147.

193 The Defence does suggest that the use of the alleged uncorroborated hearsay resulted from or led to any violation of Taylor's rights to have adequate time and facilities for the preparation of his defence, to defend himself in person or through legal counsel of his choosing, to examine or have examined the witnesses against him, to obtain the attendance and examination of witnesses on his behalf under the same conditions as the Prosecution and to not be compelled to testify against himself or confess guilt. Statute, Article 17(4)(b), (d), (e) and (g). The substantial evidentiary record in these proceedings discloses a vigorous adversarial process, protected by the letter and spirit of the Statute, which balances the rights of the Parties consistent with the presumption of innocence of the accused . *See* Sir Matthew Hale, *History and Analysis of the Common Law of England*, p. 164 ("[B]y this Course of personal and open Examination, there is an opportunity for all Persons concerned, *viz.* The Judge, or any of the Jury, or the Parties, or their Council or Attornies, to propound occasional Questions, which beats and boults out the Truth . . . .").

194 *See, e.g.*, Taylor Appeal, paras 25 ("This discussion concerned 'depositions' elicited by a judicial officer or lawyer, under oath, and recorded by stenographers. *The rationale for this prohibition is that no matter how accurate the recording, the reliability of the source cannot be adequately tested so as to justify relying on it to determine a directly incriminating fact*. The presence of three, five or ten stenographers *does not enhance reliability* . . . .") (emphasis added); 28 ("The fact that eight witnesses reported the same hearsay does not entitle it to any greater weight than if Sam Bockarie had made this allegation in a room with eight stenographers."), 36 ("A review of the Judgment as a whole suggests that the Chamber systematically failed to exercise due caution in respect of hearsay evidence.").

195 As the Appeals Chamber held, corroboration is simply one of many potential factors in the Trial Chamber's assessment. *Supra* para. 78.

196 *See infra* paras 123-125, 134, 135, 143-145, 150-152, 165-167, 172-176, 182, 183, 195, 196, 219, 236, 241, 242, 250-252.

197 *Al-Khawaja and Tahery v. UK,* para. 151.

198 *See infra* paras 149-152.

199 Taylor Appeal, Ground 6.

200 Taylor Application for Judicial Notice.

201 Taylor Application for Judicial Notice, para. 4.

202 Taylor Application for Judicial Notice, para. 8.

203 Taylor Application for Judicial Notice, para. 8.

204 Taylor Application for Judicial Notice, para. 8.

205 Prosecution Response to Application for Judicial Notice, para. 3.

206 Prosecution Response to Application for Judicial Notice, para. 12.

207 Prosecution Response to Application for Judicial Notice, para. 12.

208 Taylor Reply on Judicial Notice, para. 7.

209 Taylor Reply on Judicial Notice, para. 8 (emphasis added).

210 Taylor Reply on Judicial Notice, para. 14

211 *Taylor* Decision on Adjudicated Facts.

212 Prosecution Final Trial Brief, paras 515, 528.

213 Prosecution Final Trial Brief, para. 515. *See* also Prosecution Final Trial Brief, para. 528 ("The first group of RUF were radio operators Alfred Brown and King Perry and their bodyguards. The second group were RUF fi ghters released from Pademba Road prison. The third group were RUF and Liberian fighters in the Northern Jungle who were formed into the Red Lion battalion under the command of '05.' The fourth group of RUF manpower inside Freetown was a predominantly RUF force sent into Freetown by Issa Sesay.").

214 Trial Judgment, para. 3435.

216 Taylor Appeal, para. 101.

217 Taylor Appeal, para. 101.

218 Prosecution Response, para. 66, *citing Krajišnik* Decision on Adjudicated Facts, para. 17 (emphasis in original).

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219 Prosecution Response, paras, 62, 63, 67, 68.

220 Taylor Reply, para. 8.

221 Taylor Reply, para. 8.

222 *Taylor* Decision on Adjudicated Facts, Annex A, page. 24.

223 Taylor Appeal, para. 85.

224 Trial Judgment, para. 3378.

225 Admitted Facts and Law, Agreed Fact 31. *See* Trial Judgment, para. 3374.

226 Trial Judgment, para. 3435.

227 Rule 94.

228 *Sesay et al.* Decision on Adjudicated Facts, para. 17. *Accord Karemera* Decision on Adjudicated Facts, para. 42; *Krajišnik* Decision on Adjudicated Facts, para. 16; *Mladić* Fourth Decision on Adjudicated Facts, para. 11.

229 There is no prohibition against introducing adjudicated facts at any stage in the trial. *See, e.g.*, *Sesay et al.* Decision on Adjudicated Facts, para. 35; *Hadžihasanović and Kubura* Decision of Judicial Notice of Adjudicated Facts. However, the cases cited by the Defence which describe a process by which challenges to adjudicated facts might be made are predominantly those in which adjudicated facts have been accepted prior to the presentation of evidence , and in which the issues confronted in this Ground were not present.

230 *See supra* paras 93-99.

231 Taylor Application for Judicial Notice, para. 10.

232 Taylor Application for Judicial Notice, para. 10.

233 Taylor Reply on Judicial Notice, para. 8. The Defence asserts on Appeal that when the Trial Chamber stated in paragraph 32 of the *Taylor* Decision on Adjudicated Facts that "the Prosecution may have the option to challenge [the adjudicated facts] by cross-examining Defence witnesses or by calling rebuttal evidence," it excluded the possibility that the Prosecution could rely on evidence already introduced in its case in chief. However, when that phrase is read in context, including the reference to paragraph 2 of the Defence's submission in its request for acceptance of adjudicated facts, it is clear that the Trial Court, in allowing that the Prosecution *may* produce additional evidence, in no way limited the Prosecution's challenge of adjudicated facts to evidence newly adduced.

234 *Sesay et al.* Decision on Adjudicated Facts.

235 *Sesay et al.* Decision on Adjudicated Facts, para. 35.

236 This view is in line with the well-recognised theory of the effect of rebuttable presumptions which goes by the name Morgan-McCormick after the scholars who promoted it. McCormick on Evidence, § 336-345, pp. 973-980.

237 *Mladić* Fourth Decision on Adjudicated Facts, para. 15.

238 *Mladić* Fourth Decision on Adjudicated Facts, para. 15.

239 *Mladić* Fourth Decision on Adjudicated Facts, para. 15. This position is in line with the rival theory of rebuttable presumptions, named after two of its proponents, the Thayer-Wigmore theory, which views the presumption as a "bursting bubble" that disappears after the opponent to it presents any evidence that would challenge it. J. Thayer, A Preliminary Treatise on Evidence at the Common Law 313-352; Wigmore, Evidence §§ 2490-2493; Helman, *Presumptions*, 22 CAN. B. REV. 118 (1944).

240 Taylor Appeal, paras 43-53.

241 Taylor Appeal, para. 45.

242 Taylor Appeal, para. 45.

243 Taylor Appeal, para. 45.

244 Taylor Appeal, para. 47.

245 Taylor Appeal, paras 49, 50-52.

246 Taylor Appeal, para. 44.

247 Prosecution Response, para. 28.

248 Prosecution Response, para. 28.

249 Prosecution Response, para. 28.

250 Prosecution Response, para. 30.

251 Prosecution Response, para. 30.

252 *Sesay et al*. Appeal Judgment, para. 200. *Accord Nahimana et al.* Appeal Judgment, para. 194.

253 *Sesay et al*. Appeal Judgment, para. 219.

254 *Sesay et al*. Appeal Judgment, para. 1137.

255 *Brima et al*. Appeal Judgment, para. 146.

256 Trial Judgment, paras 212-380.

257 Trial Judgment, para. 165, *citing Blagojević and Jokić* Trial Judgment, para. 23.

258 Trial Judgment, para. 165, *citing Brima et al.* Trial Judgment, para. 108, *Nahimana et al.* Appeal Judgment, para. 194, *Halilović* Trial Judgment, para. 17.

259 Trial Judgment, para. 212.

260 Of the 115 witnesses who testified *viva voce*, 94 were Prosecution witnesses.

261 During closing arguments, Defence Counsel stated: "I would invite the Court to take on board my approach to the witnesses listed in the final section of the brief, together with 338." Transcript, Taylor Closing Arguments, 10 March 2011, pp. 49518-49519. In its Final Trial Brief, the Defence challenged the credibility of 18 Prosecution witnesses that the Trial Chamber addressed in detail: paras 891-898 (Perry Kamara), 1287 (TF1-362), 1214-1225 (TF1-338), 1377-1556 (Abu Keita, TF1-371, Foday Lansana, Mustapha M. Mansaray, Joseph "Zigzag" Marzah, Isaac Mongor, TF1-516, TF1-539, Alice Pyne, TF1-375, TF1-567, TF1-585, Mohamed Kabbah, TF1-579 and Dauda Aruna Fornie).

262 In its Final Trial Brief, the Prosecution identified Issa Sesay and DCT-008 as critical witnesses to the Defence's claim that Benjamin Yeaten supplied the RUF/AFRC with arms and ammunition without Taylor's knowledge, and argued that their testimony on this issue was implausible. Prosecution Final Trial Brief, para. 1254. Otherwise, the Prosecution did not specifically challenge the credibility of Defence witnesses in its Final Trial Brief, as it was the Prosecution's position that the testimonies of Defence witnesses supported the Prosecution's case. Prosecution Final Trial Brief, paras 1222-1274.

263 Trial Judgment, paras 213-219 (Abu Keita), 220-226 (TF1-371), 227-236 (Perry Kamara), 237-243 (Foday Lansana), 244-253 (TF1-362), 254-262 (Mustapha M. Mansaray), 267-274 (Isaac Mongor), 275-284 (TF1-516), 285-289 (Alimamy Bobson Sesay), 290-295 (Samuel Kargbo), 304-307 (Alice Pyne), 313-317 (TF1-567), 318-329 (TF1-338), 330-333 (TF1-585), 334-338 (Mohamed Kabbah) and 346-358 (Dauda Aruna Fornie).

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264 Trial Judgment, paras 263-268 (Joseph "Zigzag" Marzah), 296-303 (TF1-539), 308-312 (TF1-375), 359-372 (Issa Sesay) and 373-380 (DCT-008).

265 *See* Trial Judgment, paras 167, 212.

266 Taylor Appeal, paras 115-117 (Ground 7), 304, 309 (Ground 15), 489, 490 (Ground 23), 816 (Ground 40).

267 *See, e.g.*, Taylor Appeal, para. 115.

268 Taylor Appeal, paras 115-117 (Ground 7: referring to witnesses TF1-371, Karmoh Kanneh and Isaac Mongor), 304, 309 (Ground 15: referring to witnesses Isaac Mongor and TF1-371), 489, 490 (Ground 23: referring to witness TF1-371), 816 (Ground 40: referring to witnesses TF1-276, TF1-334, TF1-532, TF1-548 and TF1-274).

269 Prosecution Response, para. 86.

270 Prosecution Response, para. 86.

271 Prosecution Response, para. 87.

272 Prosecution Response, paras 254, 264 (referring specifically to the evidence of Isaac Mongor and TF1-371).

273 Prosecution Response, para. 203 (referring specifically to the evidence of Mohamed Kabbah).

274 In *Brima et al*., the Appeals Chamber, favoring an inclusive, practical approach, held that there is no requirement that in order to qualify as an accomplice, a witness must have been charged with a specific offence. The Appeals Chamber considered that weighing the testimony of an accomplice relates primarily to the assessment of the credibility and reliability of the witness-whether or not he or she had an ulterior motive to testify as he or she did. The Appeals Chamber confirmed that as with any other witness, a Trial Chamber may convict on the basis of a single accomplice witness if the Trial Chamber finds the witness credible and his or her evidence reliable. The Appeals Chamber further affirmed that the Trial Chamber is in a far better position than the Appeals Chamber to decide whether alleged participation in the commission of crimes affects the credibility and the reliability of the witness's testimony. *Brima et al.* Appeal Judgment, paras 127, 128, 238.

275 *Brima et al*. Appeal Judgment, para. 128.

276 *Brima et al.* Appeal Judgment, para. 238.

277 Trial Judgment, para. 183.

278 *See* Trial Judgment, paras 213-217 (Abu Keita), 220-224 (TF1-371), 227, 229-233 (Perry Kamara), 237-239 (Foday Lansana), 244-246, 252 (TF1-362), 254 (Mustapha M. Mansaray), 263-268 (Joseph "Zigzag" Marzah), 269, 270 (Isaac Mongor), 275, 279, 283 (TF1-516), 285, 286, 288, 289 (Alimamy Bobson Sesay), 290, 292 (Samuel Kargbo), 308, 311 (TF1-375), 318, 321-327 (TF1-338), 330, 331 (TF1-585), 334, 337 (Mohamed Kabbah), 339, 340 (TF1-579), 346, 352, 356 (Dauda Aruna Fornie).

279 For the Trial Chamber's assessment of accomplice witnesses whom it found did not have ulterior motives to testify as they did, see Trial Judgment, paras 220-226, and in particular para. 220 (TF1-371); 244-253 and in particular para. 245 (TF1-362); 269-274, and in particular para. 270 (Isaac Mongor); 285-289, and in particular paras 288-289 (Alimamy Bobson Sesay). For Trial Chamber's assessment of accomplice witnesses whom it found had ulterior motives to testify as they did, see Trial Judgment, paras 263-268 (Joseph "Zigzag" Marzah), 362 (Issa Sesay).

280 Taylor Appeal, 111-151. These submissions are repeated and relied on in Ground 15. Taylor Appeal, paras 304, 308, 309.

281 Taylor Appeal, paras 115-117.

282 *See, e.g.*, Trial Judgment, paras 244-253, 285-289, 263-268, 362. The Appeals Chamber has considered the Defence submissions and reviewed the Trial Chamber's reasoning as to each of the Defence challenges to the Trial Chamber's assessment of the credibilty of accomplice witnesses. It is satisfied that the Trial Chamber properly assessed whether these accomplices, including TF1-371, Kanneh and Mongor, had ulterior motives to testify as they did, and reasonably found that they did or did not.

283 Taylor Appeal, para. 117.

284 TF1-371, Kanneh and Mongor were all senior RUF commanders whom the Trial Chamber found generally credible after assessing their potential ulterior motives to lie. TF1-371 was stationed in Buedu with Bockarie at the relevant time, and was in a position to know sensitive and confidential information. Kanneh was an RUF commander closely associated with Sam Bockarie. Mongor was one of the most senior RUF commanders, overseeing several operations and being privy to operational orders. Each witness testified that following his return from Monrovia with arms and ammunition facilitated by Taylor, Sam Bockarie convened small or private meetings with the senior RUF/AFRC commanders in Buedu to discuss the Bockarie/Taylor Plan to attack Freetown. Each witness further testified that during these meetings, Bockarie stated that he and Taylor had drawn up the Plan to attack Freetown. TF1-371 and Kanneh testified that they attended the same meeting. The Trial Chamber specifically considered inconsistencies between their accounts, and concluded that any inconsistencies were minor as their testimonies were consistent as to the subject matter of the discussions (the plan to attack Freetown), who attended the meeting (senior commanders as well as Daniel Tamba), where it was (Bockarie's house) and that during the meeting Bockarie called Taylor via satellite phone to report. Mongor met with Bockarie privately, and his testimony as to the origin and details of the plan to attack Freetown was consistent with TF1-371's and Mongor's testimonies. Further, their testimonies were supported by independent evidence, including direct evidence that Sam Bockarie and Benjamin Yeaten discussed an attack in Monrovia, and that Bockarie had been contemplating a major offensive before he travelled to Monrovia to meet with Taylor. *See* Trial Judgment, paras 183, 226, 274, 623, 658, 1269, 2236, 2704, 2876, 2881, 2896, 3100-3102, 3104, 3106-3109, 3892, 4843, 5089, 5975.

285 *Brima et al.* Appeal Judgment, para. 129.

286 *Brima et al.* Appeal Judgment, para. 128.

287 Taylor Appeal, paras 62-76 (Ground 5), 245 (Ground 12), 796-818 (Ground 40).

288 TF1-360, TF1-362, TF1-337, TF1-532, TF1-334, TF1-579, and TF1-275.

289 Taylor Appeal, para. 245 (Dauda Aruna Fornie).

290 TF1-276, TF1-334, and TF1-548.

291 Taylor Appeal, paras 69, 70.

292 Taylor Appeal, para. 802 (referring specifically to TF1-276, TF1-334, TF1-532, TF1-548, TF1-274).

293 Taylor Appeal, para. 801.

294 Taylor Appeal, para. 63.

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295 Taylor Appeal, para. 72.

296 Prosecution Response, para. 39.

297 Prosecution Response, paras 40-41.

298 Prosecution Response, para. 42.

299 Prosecution Response, para. 42.

300 Prosecution Response, para. 52.

301 Prosecution Response, paras 700, 703.

302 Prosecution Response, para. 704.

303 *Sesay et al*. Appeal Judgment, para. 199. *See* also *Karemera et al.* Decision on Abuse of Process, para. 7.

304 *Sesay et al*. Appeal Judgment, para. 200. *See* also *Brima et al*. Appeal Judgment, para. 130.

305 Trial Judgment, para. 190.

306 Trial Judgment, para. 190.

307 Trial Judgment, para. 191, *citing* Exhibit P-048, "All Disbursements for Witness TF1-276"; Exhibit P-120, "All Disbursements for Witness TF1-561"; Exhibit P-200, "All Disbursements for Witness TF1-304"; Exhibit D-064, "All Disbursements for Witness TF1-197"; Exhibit D-069, "All Disbursements for Witness TF1-034"; Exhibit D-071, "All Disbursements for Witness TF1-023"; Exhibit P-501, "Report from WVS"; Exhibit P-517, "Inter-office Memo WVS dated 22 March 2010, Expenses Incurred on DCT-146, Dated 22 March 2010"; Exhibit P-554, "Record of Expenses Incurred on DCT-190 Dated 04 June-2010."

308 Trial Judgment, para. 191, *citing* Transcripts, Alex Tamba Teh, 9 January 2008, pp 780-782, Varmuyan Sherif, 14 January 2008, pp 1162-1169, Dennis Koker, 16 January 2008, pp 1389-1398, Karmoh Kanneh, 4 May 2008, pp 9763-9771, Charles Ngebeh, 12 April 2010, pp 38726-38733, DCT-190, 28 June 2010, pp 43437-43443.

309 Trial Judgment, para. 193, *quoting* Rule 39(ii).

310 Trial Judgment, para. 192, *citing* Exhibit P-048, "All Disbursements for Witness TF1-276", Exhibit P-120, "All Disbursements for Witness TF1-561", Exhibit P-200, "All Disbursements for Witness TF1-304", Exhibit D-075, "Schedule of Interviews and Payments for TF1-579", Exhibit D-064, "All Disbursements for Witness TF1-197", Exhibit D-069, "All Disbursements for Witness TF1-034", Exhibit D-071, "All Disbursements for Witness TF1-023", Exhibit D-073, "All Disbursements for Witness SCSL P0298", Exhibit D-479, "Index of Disbursements for Witness DCT-032."

311 Trial Judgment, para. 192, *citing* Transcripts, Abu Keita, 24 January 2008, pp 2154, 2155, Perry Kamara, 7 February 2008, pp 3396-3402, Suwandi Camara, 13 February 2008, pp 3766-3808, Foday Lansana, 26 February 2008, pp. 4754-61, Isaac Mongor, 7 April 2008, pp 6702-6711, Dauda Aruna Fornie, 11 December 2008, p. 22251.

312 Trial Judgment, para. 196.

313 Trial Judgment, para. 198, *citing* Transcripts, Defence Closing Arguments, 10 March 2011, p. 49481, Isaac Mongor, 31 March 2007, p. 6240, 7 April 2008, pp 6718-6719, 6739, 6743, Moses Blah, 19 May 2008, pp 10114, 10115, Exhibit P-119, "Memo from James Johnson, Acting Prosecutor, SCSL to Moses Blah, 30 October 2006."

314 Trial Judgment, para. 198, *citing* Transcripts, Foday Lansana, 5 February 2008, pp 4612-4614, TF1-375, 22 August 2008, p. 14340.

315 Trial Judgment, para. 195.

316 Trial Judgment, para. 195, *citing Taylor* Decision on Payments to DCT-097, para. 21; *Taylor* Decision on Exculpatory Information, para. 30, *citing Karemera et al.* Decision on Disclosure of Payments, para. 6.

317 Trial Judgment, para. 195.

318 Trial Judgment, para. 197.

319 Trial Judgment, para. 197.

320 Trial Judgment, paras 190-198.

321 *See, e.g.,* Trial Judgment, paras 218 (Abu Keita), 234 (Perry Kamara), 240 (Foday Lansana), 250 (TF1-362), 260 (Mustapha M. Mansaray), 271 (Isaac Mongor), 287 (Alimamy Bobson Sesay), 344 (TF1-579), 357 (Dauda Aruna Fornie).

322 *Sesay et al*. Appeal Judgment, para. 1058, *citing Kupreškić et al.* Appeal Judgment, para. 32.

323 *Sesay et al*. Appeal Judgment, para. 519. *See Rutaganda* Appeal Judgment, para. 353. *See* also *Brima et al.* Appeal Judgment, paras 120, 121.

324 Trial Judgment, para. 165, *citing Brima et al.* Trial Judgement, para. 108; *Nahimana et al.* Appeal Judgment, para. 194; *Halilović* Trial Judgment, para. 17.

325 Taylor Appeal, paras 24-37, 38-42.

326 Taylor Appeal, paras 24-37 (Ground 1), 175, 179 (Ground 8), 235-237, 238-239, 244-245 (Ground 12), 264-266 (Ground 13), 301-307, 308-309 (Ground 15), 519, 524, 529, 560, 569, 573, 575, 578 (Ground 23), 592, 594-595 (Ground 24), 626, 627-628, 635, 639 (Ground 26), Appeal transcript, 22 January 2013, pp. 49942-49949.

327 Taylor Appeal, paras 38-42 (Ground 2), 175, 179 (Ground 8), 235-239, 243-245 (Ground 12), 264-269 (Ground 13), 301-309 (Ground 15), 491, 492, 504, 519, 524, 545, 573, 575 (Ground 23), 627, 629-631, 637-639 (Ground 26), 672 (Ground 29).

328 Taylor Appeal, paras 169-171, 174-178 (Ground 8), 203, 205 (Ground 10), 276 (Ground 13), 311 (Ground 15), 485, 486, 493, 494, 500, 503, 509, 511, 539, 542, 556, 559 (Ground 23), 638 (Ground 26), 664 (Ground 28).

329 Taylor Appeal, para. 29.

330 Prosecution Response, para. 15.

331 *Sesay et al*. Appeal Judgment, para. 518, *citing Fofana and Kondewa* Appeal Decision Refusing Bail, para. 29; *Fofana and Kondewa* Appeal Judgment, para. 198, *citing Gacumbitsi* Appeal Judgment, para. 115. *Accord Kamuhanda* Appeal Judgment, para. 241; *Kupreškić et al*. Appeal Judgment, para. 303.

332 UNWCC Law Reports Vol. XV, pp. 198, 199; *See* also *British Law Concerning Trials of War Criminals by Military Courts*, p. 108; Ordinance No. 7, Art. I; *Peleus* Case, p. 14; *Dreierwalde* Case, p. 85; *Belsen* Case, pp 130, 135-138, 142; *Albert Bury and Wilhelm Hafner* Case, p. 63; *Eric Killinger and Four Others* Case, pp 70-72; *General Tomoyuki Yamashita* Case, pp 23, 45, 61, 79-81; *Flick* Case, p. 6; *Hans Renoth* Case, p. 78; *Eberhard Schoengrath and Six Others* Case, p. 83; UNWCC Law Reports, Vol. IX, Annex, p. 108.

333 *Nahimana et al*. Appeal Judgment, para. 509, *citing Gacumbitsi* Appeal Judgment, paras. 115 and 133; *Naletilić and Martinović* Appeal Judgment, para. 217; *Semanza* Appeal Judgment, para. 159; *Kordić and Čerkez* Appeal

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Judgment, para. 281; *Rutaganda* Appeal Judgment, para. 34; *Akayesu* Appeal Judgment, paras. 284-287; *Aleksovski* Appeal Decision on Admissibility of Evidence, para. 15; *Blaškić* Decision on Hearsay; *Tadić* Decision on Hearsay.

334 *Sesay et al*. Appeal Judgment, para. 518. *Accord Muvunyi* Appeal Judgment, para. 70; *Ndindabahizi* Appeal Judgment, para. 115; *Rutaganda* Appeal Judgment, para. 34.

335 *Fofana and Kondewa* Appeal Judgment, para. 198, *citing Kordić and Čerkez* Appeal Judgment, para. 281, *citing Aleksovski* Appeal Decision on Admissibility of Evidence, para. 15.

336 *See Aleksovski* Appeal Decision on Admissibility of Evidence, para. 15 ("The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, *although even this will depend upon the infinitely variable circumstances which surround hearsay evidence*."), *citing Tadić* Decision on Hearsay, Separate Opinion of Judge Stephen (Judge Stephen further noted that "[t]he fact that evidence is hearsay does not, of course, affect its relevance nor will it necessarily deprive it of probative value; the fact that in common law systems there exist many exceptions to the exclusion of hearsay evidence is in itself testimony to this.").

337 Trial Judgment, para. 168.

338 Trial Judgment, para. 168, *citing Brima et al.* Decision on Motion to Exclude Evidence, para. 24. *See* also *Blagojević and Jokić* Trial Judgment, para. 21; *Aleksovski* Appeal Decision on Admissibility of Evidence, para. 14.

339 Trial Judgment, para. 168, *citing Fofana and Kondewa* Appeal Decision on Judicial Notice and Admission of Evidence, Separate Opinion of Justice Robertson, para. 6. *See* also *Sesay et al.* Appeal Judgment, para. 518; *Sesay et al.* Trial Judgment, paras 495, 496; *Krnojelać* Trial Judgment, para. 70; *Aleksovski* Appeal Decision on Admissibility of Evidence, para. 15.

340 Trial Judgment, para. 168, *citing Sesay et al.* Trial Judgment, para. 495, *citing Krnojelać* Trial Judgment, para. 70; *Aleksovski* Appeal Decision on Admissibility of Evidence, para. 15. *See* also *Delić* Trial Judgment, para. 27; *Tadić* Decision on Hearsay, para. 16.

341 Trial Judgment, para. 169, *citing Sesay et al.* Trial Judgment, para. 496; *Aleksovski* Appeal Decision on Admissibility of Evidence, para. 15; *Kalimanzira* Appeal Judgment, para. 78.

342 Trial Judgment, para. 169, *citing Rukundo* Trial Judgment, para. 89; *Lubanga* Decision on Confirmation of Charges, para. 140; *Rukundo* Appeal Judgment, paras 194, 196.

343 Trial Judgment, para. 169, *citing Sesay et al.* Trial Judgment, para. 496; *Aleksovski* Appeal Decision on Admissibility of Evidence, para. 15.

344 Trial Judgment, para. 169, *citing Brima et al.* Appeal Judgment, para. 199.

345 Trial Judgment, para. 169, *citing Sesay et al.* Trial Judgment, para. 496; *Delić* Trial Judgment, para. 27.

346 Trial Judgment, para. 165.

347 Taylor Appeal, paras 175, 179 (Ground 8), 235-237, 238-239, 244-245 (Ground 12), 264-266 (Ground 13), 301-307, 308-309 (Ground 15), 519, 524, 529, 560, 569, 573, 575, 578 (Ground 23), 592, 594-595 (Ground 24), 626, 627-628, 635, 639 (Ground 26).

348 Taylor Appeal, paras 175, 179 (Ground 8), 235-237, 238-239, 244-245 (Ground 12), 264-266 (Ground 13), 301-307, 308-309 (Ground 15), 519, 524, 529, 560, 569, 573, 575, 578 (Ground 23), 592, 594-595 (Ground 24), 626, 627-628, 635, 639 (Ground 26).

349 Prosecution Response, para. 18, *citing Fofana and Kondewa* Appeal Judgment, para. 198; *Sesay et al.* Appeal Judgment, para. 518; *Karera* Appeal Judgment, para. 39; *Gacumbitsi* Appeal Judgment, para. 115.

350 Prosecution Response, para. 14.

351 Furthermore, this Chamber has concluded that the letter and spirit of the Statute, the Rules, which implement it, and the jurisprudence, which interprets it, protect the Parties' rights to challenge hearsay evidence and provide safeguards to protect the accused's rights to defend himself. *See supra* paras 81-91.

352 Taylor Appeal, paras 175, 179 (Ground 8), 235-237, 238-239, 244-245 (Ground 12), 264-266 (Ground 13), 301-307, 308-309 (Ground 15), 519, 524, 529, 560, 569, 573, 575, 578 (Ground 23), 592, 594-595 (Ground 24), 626, 627-628, 635, 639 (Ground 26).

353 The Defence submissions repeatedly assume that evidence regarding the acts and conduct of Benjamin Yeaten, Daniel Tamba and Ibrahim Bah is not evidence of Taylor's involvement in, *inter alia*, the provision of materiel and advice to the RUF/AFRC. On this premise, the Defence asserts that the sole or decisive evidence for particular findings of Taylor's involvement is hearsay, as the direct evidence on the record related to Yeaten, Tamba, Bah or others. The Defence's premise is flawed and does not account for the Trial Chamber's extensive findings on those individuals' roles as intermediaries between Taylor and the RUF/AFRC, which the Defence does not address at any point in its submissions. *See, e.g.,* Trial Judgment, paras 2570-2753.

354 *Contra* Taylor Appeal, para. 524 ("In finding that Taylor was aware of and was, in effect, the ultimate source of the shipments delivered by Tamba, Marzah and Weah, the Chamber recognised that the evidence was largely hearsay."). The Trial Chamber first recalled that four Prosecution witnesses (Joseph Marzah, TF1-579, Varmuyan Sherif and Abu Keita) testified to being directly involved in transporting military equipment from Liberia to the RUF/AFRC in Buedu. Sherif and Marzah stated that they took direct instructions from Taylor when they transported those supplies to the RUF/AFRC, while the testimonies of TF1-579 and Keita provided evidence of Taylor's involvement through the involvement of Yeaten. Furthermore, the Trial Chamber recalled that thirteen other Prosecution witnesses provided corroborating evidence indicating that Taylor was the source of the materiel supplied by *inter alia* Tamba, Marzah and Weah. In this context, the Trial Chamber noted that "an important part of the Prosecution's evidence as to [Taylor's] involvement is hearsay." However, "the hearsay evidence of Prosecution witnesses is corroborated by other evidence from the remaining Prosecution witnesses which also points to [Taylor] as the source of the supplies." TF1-516, a radio operator based in Buedu, testified that Bockarie would request ammunition via radio, usually to Base One, and that Base One would then reply that the shipment would be delivered. TF1-516 further testified that the request would be transmitted to "020," the radio station at the Executive Mansion, which would then reply to the RUF radio station in Buedu when the shipment arrived and instruct Bockarie to

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pick it up. Likewise, Exhibits P-066 and P-067 document that the RUF/AFRC leadership approached and received materiel from Taylor during the relevant period. TF1-375 and TF1-567 testified that the intermediaries who delivered the supplies were Taylor's subordinates, while Jaward, TF1-585, TF1-567 and Dennis Koker testified that the shipments were accompanied by Liberian military or police escorts. In addition, Yanks Smythe testified that at the arms and ammunition warehouse next to White Flower, it was not possible for the Yeaten, as SSS Director, to obtain any significant quantity of supplies without the approval of the President, and it was staffed 24 hours a day by SSS personnel. This was corroborated by Varmuyan Sherif, and other witnesses testified that the arms and ammunition delivered to the RUF/AFRC originated from the warehouse near or next to White Flower. Trial Judgment, paras 4943-4958.

355 *Contra* Taylor Appeal, para. 519 ("Almost all of the evidence concerning Taylor's knowledge of, or involvement in, Bockarie obtaining supplies in Liberia is based on hearsay from a single source: Bockarie himself. . . . The Chamber simply accepted the evidence as true, because many witnesses heard Bockarie say the same thing."). The Trial Chamber expressly recognised that "much of the evidence relied on by the Prosecution to support its allegation that Bockarie received [this] arms or ammunition from [Taylor] while in Liberia [was] *hearsay and circumstantial*." (emphasis added). A number of witnesses testified that Bockarie made regular trips to Liberia in 1998 and returned with materiel, or that Bockarie made specific trips to Liberia in 1998 during which he obtained materiel, including Witnesses Augustine Mallah, TF1-371, Mohamed Kabbah, TF1-585, Dauda Aruna Fornie, Karmoh Kanneh, Samuel Kargbo, Alice Pyne, Albert Saidu and Jabaty Jaward. The Trial Chamber also noted several other pieces of evidence indicating that Taylor knew of and sanctioned the supply of materiel to Bockarie. This evidence was not hearsay and did not rely on Bockarie as its source. Fornie testified that on three separate occasions in 1998, he travelled to Monrovia with or on behalf of Bockarie to collect materiel with the assistance of Benjamin Yeaten and Daniel Tamba. Fornie's testimony regarding each of these trips evinced clear links with Taylor, particularly insofar as both Yeaten and Tamba were involved and as Fornie testified that Yeaten sent a message to Bockarie that Bockarie was to travel to Monrovia "on Taylor's orders." Furthermore, Karmoh Kanneh testified that in 1998 he and Bockarie travelled to Foya, Liberia, where they picked up materiel delivered by a helicopter flown in from Monrovia. TF1-371 testified that on his return from these trips to Liberia, Bockarie was always escorted by members of Taylor's SSS. Kabbah noted that Bockarie never required travel documents or exemptions from the travel ban to cross the border. Taylor himself testified that Bockarie could not travel to Liberia without his knowledge. Trial Judgment, paras 5008-5026.

356 *Contra* Taylor Appeal, para. 573 ("This finding was based impermissibly on the uncorroborated hearsay evidence of TF1-567."). TF1-567 testified that in October 1999, he went with Bockarie and Yeaten to Spriggs Field, Monrovia, where Bockarie and TF1-567 boarded a helicopter painted in camouflage colours. The helicopter was loaded with up to 15 "sardine" tins of AK rounds and an "RPG bomb with the TNT." The Trial Chamber noted other evidence that Bockarie made trips to Monrovia during 1999 from which he returned with ammunition, and that helicopters were used to transport materiel to the RUF/AFRC. This evidence was supported by the substantial direct, circumstantial and hearsay evidence on the record that Yeaten was representing, and was perceived to be representing Taylor. TF1-567 further testified that before he and Bockarie left Spriggs Field in the helicopter, Yeaten explained to Bockarie that the materiel in the helicopter had been given to him "by my dad, Charles Taylor" to take to Buedu for the purpose of "keeping security" while Sankoh was in Freetown. Trial Judgment, paras 5099, 5102-5109. *See* also para. 172, fn. 393.

357 *Contra* Taylor Appeal, para. 578 ("That Sesay requested and was provided with materiel by Yeaten thus relies on TF1-516's uncorroborated hearsay evidence . . . ."). TF1-516 testified that from mid-1999 to January 2001, he worked for Yeaten as a radio operator in Monrovia, and in that capacity he facilitated direct conversations between Sesay and Yeaten in which Sesay requested materiel. The Trial Chamber considered that this assignment, combined with living in Yeaten's compound, made TF1-516 a reliable witness "as to whether requests for materiel were made and satisfied, how they were satisfied and Yeaten's daily activities in general." Exhibit P-099A documented a radio message from Yeaten to Issa Sesay in September 2001 stating that he had despatched ammunition via Colonel Gbovay and one of Sesay's men. The Trial Chamber considered this contemporary documentary evidence "to be particularly valuable corroboration of the oral evidence concerning continued delivery of materiel during Sesay's administration as leader." While TF1-516 did not explicitly link Taylor to the shipments of materiel in 2000 and 2001, he did link Yeaten to these shipments via Roland Duoh (a.k.a. Amphibian Father). Witnesses Varmuyan Sherif and TF1-567 corroborated TF1-516's account that Roland Duoh was involved in the delivery of arms and ammunition to the RUF on the instructions of Taylor. Trial Judgment, paras 5152-5159.

358 Taylor Appeal, para. 544.

359 Taylor Appeal, para. 548.

360 *See* Trial Judgment, paras 5416-5506.

361 *See* Trial Judgment, paras 5507-5526.

362 Trial Judgment, para. 5507.

363 Trial Judgment, para. 5507.

364 Trial Judgment, para. 5507 and fn. 12266.

365 Trial Judgment, para. 5507.

366 Trial Judgment, para. 5514.

367 Trial Judgment, paras 5432, 5511. Issac Mongor was a former NPFL member who remained in Sierra Leone and assumed the role of one the most senior RUF commanders, overseeing several operations and being privy to operational orders. During the Junta period he became a member of the Supreme Council and attended several meetings of this council. He also attended other meetings with high-level officials such as Johnny Paul Koroma and Ibrahim Bah. Trial Judgment, paras 32, 274, 658, 1987, 2727, 2819, 2896, 3892, 5850, 6948.

368 Trial Judgment, para. 5432.

369 Trial Judgment, para. 5432.

370 Trial Judgment, paras 5444, 5511. Augustine Mallah was a member of the RUF, and a security officer for Mike Lamin (a senior RUF commander) from 1996 to disarmament. Trial Judgment, paras 752, 1623, 2533, 2647, 2811, 3811, 3929, 4160, 4878.

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371 Trial Judgment, para. 5442. TF1-567 was an RUF member who was a Black Guard trained by Foday Sankoh, and held various positions in the RUF until 2001. He went with Sam Bockarie to Monrovia for the Lomé peace talks. Trial Judgment, paras 313, 384, 388, 5731.

372 Trial Judgment, para. 5511, fn 12280. Albert Saidu was an RUF adjunct from 1991 to 2001. He was promoted in November 1998. Trial Judgment, paras 2384, 2467, 5441.

373 Trial Judgment, para. 5507.

374 Trial Judgment, para. 5515.

375 Trial Judgment, paras 5424-5431, 5515. Dauda Aruna Fornie was an RUF radio operator who in 1998, relocated to Buedu, where he travelled with Sam Bockarie on a number of trips to Liberia. In 1999, Fornie accompanied the RUF/AFRC delegation to the Peace Talks in Lomé and other cities. He was imprisoned and tortured by Bockarie for his allegiance to Sankoh, and by the end of the war, Fornie was in Pendembu. Trial Judgment, para. 346.

376 Trial Judgment, para. 5467. Jabaty Jaward was a member of the RUF and Taylor's Special Security Services (SSS). He was a clerk for Issa Sesay and Sam Bockarie's storekeeper until 2000, and a member of the Anti-Terrorist Unit (ATU) from early 2000. Trial Judgment, paras 2487, 2644, 2708.

377 Trial Judgment, para. 5416. TF1-371 was a senior RUF commander, and in a position to know sensitive and confidential information. For instance, he was in a position to know of requests for and arrival of shipments of arms and ammunition. Likewise, he was privy to first hand information regarding the exchange of diamonds between the RUF and Taylor's intermediaries. The Trial Chamber also noted that this witness was stationed in Buedu with Sam Bockarie after the fall of the Junta regime from March 1998 to April 1999. While there he attended senior officers' meetings at Bockarie's residence. Trial Judgment, paras 226, 2236, 2876, 3698, 4843, 5089, 5975.

378 Trial Judgment, paras 5437 (Marzah), 5447 (Sherif). Joseph Marzah was Taylor's SSS Chief of Operations at the Executive Mansion. The Trial Chamber found that supplies of arms and ammunition were sent to the RUF/AFRC in Buedu between February 1998 and December 1999 by Taylor, through, *inter alia*, Daniel Tamba (a.k.a. Jungle), Sampson Weah and Marzah. Trial Judgment, paras 263, 3915, 4958, 4965, 5722(a), 5835(v), 5837, 5838. Varmuyan Sherif was a former ULIMO-K fighter who was the Assistant Director of Operations for Taylor's SSS at the Executive Mansion in Monrovia from 1997 until the end of 1999. Trial Judgment, paras 2590, 3674, 5447.

379 Trial Judgment, para. 5447.

380 Trial Judgment, para. 5447.

381 Trial Judgment, para. 5513. Karmoh Kanneh was a former civilian captured and enlisted as a fighter by the RUF in 1991. He was later put "under the direct command of Foday Sankoh." He was a senior RUF commander who was closely associated with Sam Bockarie. Trial Judgment, paras 607, 623, 2704, 2881, 3689.

382 Trial Judgment, para. 5514.

383 *See* Trial Judgment, paras 393-397, 5489-5497. Exhibit P-063 "RUF Headquarters Forum with the External Delegates Led by the RUF Defence Staff, 2nd December 1998."

384 *See* Trial Judgment, paras 382-392, 5498-5499. Exhibit P-067 "RUF Situation Report."

385 Trial Judgment, para. 5524.

386 *Compare* Taylor Appeal, paras. 175,179 (Ground 8) *and* Trial Judgment, paras 3118-3120. *Compare* Taylor Appeal, paras 235-237 (Ground 12) *and* Trial Judgment, paras 3555-3564. *Compare* Taylor Appeal, paras 238-239 (Ground 12) *and* Trial Judgment, paras 3555-3564. *Compare* Taylor Appeal, paras 244-245 (Ground 12) *and* Trial Judgment, paras 3587-3590. *Compare* Taylor Appeal, paras 264-266 (Ground 13) *and* Trial Judgment, para. 3462. *Compare* Taylor Appeal, paras 301-307 (Ground 15) *and* Trial Judgment, paras 3113-3116. *Compare* Taylor Appeal, paras 308-309 (Ground 15) *and* Trial Judgment, paras 3113-3116. *Compare* Taylor Appeal, para. 524 (Ground 23) *and* Trial Judgment, paras 4943-4957. *Compare* Taylor Appeal, para. 529 (Ground 23) *and* Trial Judgment, paras 5582-5592. *Compare* Taylor Appeal, para. 560 (Ground 12) *and* Trial Judgment, paras 5706-5708. *Compare* Taylor Appeal, para. 569 (Ground 23) *and* Trial Judgment, paras 5089-5094. *Compare* Taylor Appeal, paras 573, 575 (Ground 23) *and* Trial Judgment, paras 5102-5109. *Compare* Taylor Appeal, para. 578 (Ground 23) *and* Trial Judgment, paras 5153-5158. *Compare* Taylor Appeal, paras 592, 594-595 (Ground 24) *and* Trial Judgment, paras 4365-4393. *Compare* Taylor Appeal, para. 626 (Ground 26) *and* Trial Judgment, paras 2831-2854. *Compare* Taylor Appeal, paras 627-628 (Ground 26) *and* Trial Judgment, paras 2856-2862. *Compare* Taylor Appeal, para. 635 (Ground 26) *and* Trial Judgment, paras 4105-4108. *Compare* Taylor Appeal, para. 639 (Ground 26) *and* Trial Judgment, paras 4144-4150.

387 *See, e.g.,* Trial Judgment, paras 591, 609 (rejecting uncorroborated hearsay evidence of Witness Bao), 1497, 1573 (rejecting uncorroborated hearsay evidence of Witness TF1-174), 1794 (rejecting uncorroborated hearsay evidence of Witness Gbonda), 3942 (rejecting hearsay evidence of Witness Sherif on Taylor giving an instruction to Marzah, the allegation to which Marzah did not testify), 3981 (rejecting uncorroborated hearsay evidence of Witness TF1-567), 4853 (rejecting uncorroborated hearsay evidence of Witness Fornie), 6746 (rejecting uncorroborated hearsay evidence of Witness Jaward).

388 Grounds 2, 8, 12, 13, 15, 23, 26, 29.

389 Taylor Appeal, paras 38-42.

390 In addition to the general submissions made in Ground 2 (Taylor Appeal, paras 38-42), the Defence makes individual challenges in other grounds. Sam Bockarie (seven grounds): Taylor Appeal, paras 175, 179 (Ground 8), 235-239, 244-245 (Ground 12), 264-269 (Ground 13), 301-309 (Ground 15), 519, 524, 545 (Ground 23), 627, 629-630, 637, 639 (Ground 26), 672 (Ground 29). Benjamin Yeaten (two grounds): Taylor Appeal, paras 243-245 (Ground 12), 573, 575 (Ground 26). Daniel Tamba (two grounds): Taylor Appeal paras 504 (Ground 23), 631, 638 (Ground 26). Ibrahim Bah (one ground): Taylor Appeal paras 491, 492 (Ground 23).

391 Prosecution Response, para. 23.

392 The Trial Chamber accordingly devoted significant discussion to the evidence that Yeaten, Tamba and Bah acted as "intermediaries" on behalf of Taylor. Trial Judgment, paras 2570-2753.

393 Trial Judgment, paras 3498, 3588, 3589 (Dauda Aruna Fornie testified that Bockarie called Yeaten on the satellite phone and Yeaten told Bockarie that Taylor wanted him to ensure that the prisoners released were transferred to Buedu for their protection); 5099, 5103, 5108 (TF1-567 testified that Yeaten explained to Bockarie that this materiel was

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given to him "by my dad, Charles Taylor"). *See, e.g.*, Trial Judgment, paras 2621-2629, 2710, 4953, 4954. The Trial Chamber expressly "considered and rejected the Defence contention that the movement of arms and ammunitions, and diamonds, between Sierra Leone and Liberia was undertaken in the context of a 'private enterprise' under Benjamin Yeaten, unbeknownst to [Taylor]." In making this finding, the Trial Chamber recalled the testimony of several witnesses that Yeaten was extremely powerful but still subject to Taylor's authority. The Trial Chamber found that it was "clear from the evidence that Yeaten had a close relationship with [Taylor], which bypassed the line of reporting to the Minister of State referred to by [Taylor] in his testimony and emboldened Yeaten to take action without prior direction from [Taylor]." There was also evidence that Yeaten did certain things on Taylor's behalf that were kept from others, but not from Taylor. Varmuyan Sherif and Yanks Smythe testified that Taylor himself controlled access to the arms and ammunition warehouse at White Flower. The Trial Chamber further considered the Defence's submission . . . "incompatible with the consistent evidence of Prosecution witnesses that it was open knowledge amongst the Sierra Leonean rebels that [the intermediaries] were bringing arms and ammunition on behalf of [Taylor]." In its submissions, the Defence fails to address the Trial Chamber's findings as set out above, restates its general contention from trial that Yeaten was acting without Taylor's authorisation and suggests that this was a reasonable alternative interpretation of the evidence. *See, e.g.*, Taylor Appeal, para. 556. The Trial Chamber noted that there was "substantial evidence that Yeaten was representing, and was perceived to be representing [Taylor]." It considered Taylor's argument that Yeaten was acting independently, but rejected it. As well, the Trial Chamber accepted the evidence of Moses Blah, Vice-President of Liberia from 2000 to 2003, that "[o]nly Taylor could give Yeaten orders", that Yeaten was "a crucial man and a most powerful man working with the President" and that "'[n]obody could disobey an order from Taylor. You would be punished severely, including myself. We could not disobey his orders.'" Trial Judgment, paras 2626, 2629,2577, 2578. Having considered the entirety of the evidence, the Trial Chamber found that Yeaten was deeply involved in the conflict and that he had an important role in: (i) facilitating the exchange of diamonds between the RUF/AFRC and Taylor (paras 2726, 3845, 4041, 4204, 4218, 5880, 5881, 6000); (ii) facilitating arms and ammunition to the RUF/AFRC (paras 373-380, 2587, 2589, 2611, 2612, 2625-2628, 4046, 4205); (iii) facilitating military supplies and military personnel to the RUF (paras 2585, 4052, 4218, 4406, 4429, 4458, 4470, 6005); (iv) facilitating meetings and communications between Taylor and the RUF/AFRC (paras 2584, 2587, 2594, 3809, 3880, 4410, 4458, 6425, 6930); (v) relaying instructions and advice from Taylor to the RUF/AFRC (paras 3498, 4102, 4107, 4109); (vi) transferring funds from Taylor to the RUF/AFRC (paras 4221, 5207); (vii) being responsible for the RUF Guesthouse (paras 2587, 2602-2603, 4247); and (viii) updating Taylor in relation to the situation of the Sierra Leonean conflict (para. 2593).

394 The Trial Chamber set out the considerable evidence regarding Tamba's role as an intermediary between Taylor and the RUF/AFRC, and concluded that "Daniel Tamba (a.k.a. Jungle) worked for the SSS as a subordinate of Benjamin Yeaten and [Taylor] and served as a courier of arms, diamonds and messages back and forth between the AFRC/RUF and [Taylor] throughout the Indictment period." Trial Judgment, para. 2718. *See also* Trial Judgment, paras 2702-2717 (deliberations on Tamba's role). Witnesses described Tamba as not a member of Taylor's SSS and the RUF, and the Trial Chamber found this indicative of the witnesses' perception that Tamba was tied closely to both the RUF and Taylor as almost all of the accounts described Tamba constantly travelling back and forth from Sierra Leone to Liberia. Trial Judgment, para. 2705. The Trial Chamber found that Tamba performed duties for both the RUF/AFRC and Taylor. Tamba represented Taylor and took messages from Taylor to the RUF/AFRC. For instance, in 1998, Tamba spoke at a meeting with the leaders of the RUF/AFRC prior to the Fitti-Fatta Operation and told them that Taylor recognised the relationship between the RUF and AFRC and that Taylor wanted them to try and get hold of Kono so that they could get resources in order to purchase arms and ammunition. Trial Judgment, paras 2940, 2948, 2949. Witnesses also testified that Tamba was present at the inner-circle meeting that was held at Bockarie's house after Bockarie returned from Monrovia with the Bockarie/Taylor Plan, where Bockarie informed his commanders of Taylor's involvement in designing the Plan and where Bockarie spoke to Taylor on the satellite phone and received the instruction to "use all means" to capture Freetown. At this meeting, Tamba also spoke to Taylor on the satellite phone to brief him on the meeting. Trial Judgment, para. 3102. Tamba was responsible for transporting shipments of arms and ammunition from Taylor to the RUF/AFRC from 1997 up until 2001 using vehicles provided by Taylor. Trial Judgment, paras 3915, 4065, 4845, 4958, 5163. Whenever the RUF/AFRC was short of supplies, Bockarie would radio requests through to Liberia, and Tamba would be one of Taylor's intermediaries responsible for taking the materiel to Sierra Leone. Trial Judgment, para. 4943. Tamba also provided security escort to Bockarie and Sesay when they went to Liberia to obtain materiel from Taylor and to give diamonds to Taylor. Trial Judgment, paras 3915, 63 41. He was also responsible for providing security escort to Abu Keita, a commander with military expertise sent by Taylor to Sierra Leone. Trial Judgment, paras 4459, 4475. Tamba later authorised, on Taylor's behalf, the RUF/AFRC to use the entire Scorpion Unit, which had been sent to Sierra Leone by Taylor, to assist the RUF/AFRC forces in the implementation of the Bockarie/Taylor Plan. Trial Judgment, paras 4481, 4618(iv). Tamba was responsible for transporting diamonds to Taylor on several occasions. Trial Judgment, para. 5948.

395 The Trial Chamber made considerable findings regarding Bah's role as an intermediary between Taylor and the RUF/AFRC, and concluded that "Ibrahim Bah was a trusted emissary who represented the RUF at times and the Accused at times, and served as a liaison between them at times." Trial Judgment, para. 2752. *See* also Trial Judgment, paras 2743-2752 (deliberations on Bah's role). The Trial Chamber found that the evidence did not clearly indicate any affiliation for Bah to a particular person or group, and that it showed that he instead acted as an intermediary. Trial Judgment, para. 2748. He was a businessman who helped arrange arms and diamond transactions and who did not maintain an ongoing affiliation as a subordinate or agent with either the RUF or Taylor. He nevertheless represented the RUF and Taylor in specific transactions or on specific missions. Trial Judgment, para. 2752. For instance, Bah delivered a message from Taylor at a meeting at Bocakrie's residence in Freetown urging the RUF to "work together with the AFRC," and also facilitated the Magburaka

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Shipment of arms and ammunition to the RUF/AFRC on Taylor's behalf at the time. Trial Judgment, paras 5389, 5390, 5394, 5840. Furthermore, in the end of 1998, Bah was part of the delegation that met with Bocakrie in Monrovia and then headed to Burkina Faso, where they obtained a large shipment of arms and ammunition with Taylor's assistance. Trial Judgment, paras 5507, 5840, 5841. Moreover, Bah delivered money from Taylor and Bockarie to Sankoh in Lomé in 1999. Trial Judgment, paras 3961, 6280. Bah was also involved in diamond transactions between the RUF/AFRC and Taylor and provided mining equipment to the RUF/AFRC on Taylor's behalf. Trial Judgment, paras 5975, 6042, 6129. Finally, Bah relayed important advice from Taylor to the RUF/AFRC, particularly preceding the Fitti-Fatta Operation, which Taylor had been discussing with Bockarie. Trial Judgment, paras 2949, 3611(v).

396 Trial Judgment, paras 2884, 2886, 4811 (Tamba), 5355 (Bah).

397 Trial Judgment, paras 2927-2949, 4831-4844 (Tamba), 5390-5394 (Bah).

398 *See, e.g.*, Trial Judgment, paras 599, 600, 602, 603, 610, 622, 635, 767, 768, 785, 1596(xviii).

399 *See, e.g.*, Trial Judgment, paras 2573, 2603, 2626, 3831, 3855, 5025, 6461, 6476, 6477, 6480, 6658, 6663, 6746. These findings show that after Foday Sankoh was arrested, he told Bockarie to follow Taylor's instructions and that, while Bockarie was the leader of the RUF/AFRC, he met with Taylor's intermediaries and also directly with Taylor when he received instructions and advice from Taylor. He also received instructions from Taylor through the radio network or during satellite phone conversations. These findings further show that Bockarie cooperated with Taylor and sent the RUF/AFRC troops under his command to fight Taylor's enemies.

400 Trial Judgment, para. 6461 *et seq*, 2626, 2629, 2752, 4107. The Defence does not challenge the findings that Bockarie was deferential to Taylor and generally followed his instructions, or that before Foday Sankoh left Sierra Leone on a political tour, and following his arrest in Nigeria in March 1997, he instructed Bockarie to take orders from Taylor. Trial Judgment, paras 6480, 6767(i), 6774, 6775. Nor does it dispute the historical relationship between the two, including the finding that Taylor instructed Bockarie to send RUF/AFRC forces to assist the AFL in fighting Mosquito Spray's LURD forces in Liberia and Guinea, instructions that Bockarie obeyed. Trial Judgment, paras 6658, 6661. Having considered the evidence as a whole, the Trial Chamber found that Taylor "provided ongoing advice and guidance to the RUF leadership [including Bockarie] and had significant influence over the RUF and AFRC." Trial Judgment, para. 6787.

401 Trial Judgment, paras 2864, 3130, 3564, 3591.

402 Trial Judgment, paras 5030, 5096.

403 Trial Judgment, paras 3120, 3129, 3463, 3485.

404 Trial Judgment, paras 2864, 2951, 3591, 4094, 4109, 4152, 4965, 5030, 5096, 5527, 5593.

405 *See supra* paras 157-167.

406 Trial Judgment, paras 2253, 2254, 2450, 2530, 2556-2557, 2870, 2929, 3912, 4112, 4124, 4501, 4566, 6133, 6285.

407 *Compare* Taylor Appeal, paras 175, 179 (Ground 8) *and* Trial Judgment, paras 3118, 3119. *Compare* Taylor Appeal, paras 235-237 (Ground 12) *and* Trial Judgment, paras 3515, 3555. *Compare* Taylor Appeal, paras 238-239 (Ground 12) *and* Taylor Judgment, para. 3505. *Compare* Taylor Appeal, paras 244-245 (Ground 12) *and* Trial Judgment, para. 3588. *Compare* Taylor Appeal, paras 301-307 (Ground 15) *and* Trial Judgment, para. 3116. *Compare* Taylor Appeal, paras 308-309 (Ground 15) *and* Trial Judgment, para. 3114. *Compare* Taylor Appeal, para. 524 (Ground 23) *and* Trial Judgment, paras 4872, 4948. *Compare* Taylor Appeal, para. 529 (Ground 23) *and* Trial Judgment, paras 5567, 5582. *Compare* Taylor Appeal, para. 569 (Ground 23) *and* Trial Judgment, paras 5048, 5089. *Compare* Taylor Appeal, paras 573, 575 (Ground 23) *and* Trial Judgment, para. 5099. *Compare* Taylor Appeal, para. 578 (Ground 23) *and* Trial Judgment, para. 5099. *Compare* Taylor Appeal, paras 592, 594-595 (Ground 24) *and* Trial Judgment, paras 4269, 4379. *Compare* Taylor Appeal, para. 626 (Ground 26) *and* Trial Judgment, paras 2832-2834. *Compare* Taylor Appeal, paras 627-628 (Ground 26) *and* Trial Judgment, paras 2856-2857. *Compare* Taylor Appeal, para. 635 (Ground 26) *and* Trial Judgment, para. 4106. *Compare* Taylor Appeal, para. 639 (Ground 26) *and* Trial Judgment, para. 4148.

408 Trial Judgment, paras 2815-2816, 2851 (Taylor's instruction to capture Kono), 2861 (Taylor's advice to hold Kono), 2946 (Taylor's knowledge of the Fitti-Fatta Operation), 3045, 3046 (Taylor and Bockarie's plan to invade Freetown), 3111 (Taylor and Bockarie's plan to attack Kono), 3113 (Taylor told Bockarie that the invasion of Freetown should be "fearful" and "use all means"), 3536 (Taylor ordered Bockarie via Yeaten to release prisoners from Padema Road Prison), 3532, 3563, 3564 (Taylor communicated directly with Bockarie), 4089 (Taylor provided herbalists), 4140, 4149 (Taylor's advice to construct an airfield), 4355 (Taylor provided military personnel), 4827 (Taylor provided Tamba with delivery of ammunition during Junta period), 4923 (Taylor sent supplies of materiel via intermediaries in 1998 and 1999), 5016, 5023 (Taylor involved in the supply of military equipment to Bockarie on Bockarie's trips to Liberia in 1998), 5068 (Taylor's knowledge of Bockarie's trip to Monrovia for large shipment of materiel around March 1999), 5103 (Helicopter of materiel supplied by Taylor which Bockarie returned with to Sierra Leone in or around September to October 1999), 5143 (Taylor transported ammunition from Liberia to Sierra Leone via, *inter alia*, Dopoe Menkarzon, Christopher Varmoh and Roland Duoh), 5372-5373 (Taylor and the Magburaka Shipment), 5514, 5516, 5522 (Taylor and the Burkina Faso Shipment), 5579 (Materiel supplied by Taylor was used in operations in Kono in early 1998).

409 *See, e.g.*, Trial Judgment, paras 4104, 4108 (Taylor's instruction to open Bunumbu training camp), 5145, 5154, 5158 (Taylor's supply of materiel via intermediaries to the RUF in 2000 and 2001), 6323 (Taylor used his influence to facilitate the release of UN Peacekeepers in 1999), 6380, 6381, 6382, (Taylor had significant influence over Issa Sesay's decision to release of UNAMSIL Peacekeepers in 2000), 6434, 6435, 6436, 6439, 6440 (Taylor's communications with Issa Sesay on disarmament).

410 Trial Judgment, paras 2851 (Taylor's instruction to capture Kono), 2861 (Taylor's advice to hold Kono), 2946 (Taylor's knowledge of the Fitti-Fatta Operation), 3111 (Taylor and Bockarie's plan to attack Kono), 3113 (Taylor told Bockarie that the invasion of Freetown should be "fearful" and "use

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all means"), 3563, 3564 (Taylor communicated directly with Bockarie), 4089 (Taylor provided herbalists), 4149 (Taylor's advice to construct an airfield), 5016, 5023 (Taylor involved in the supply of military equipment to Bockarie on Bockarie's trips to Liberia in 1998), 5103 (Helicopter of materiel supplied by Taylor which Bockarie returned with to Sierra Leone in or around September to October 1999), 5143 (Taylor transported ammunition from Liberia to Sierra Leone via Dopoe Menkarzon, Christopher Varmoh and Roland Duoh), 5514, 5516, 5522 (Taylor and the Burkina Faso Shipment).

411 Trial Judgment, paras 2819, 2824, 2825, 2848 (Taylor's instruction to capture Kono), 2945 (Taylor's knowledge of the Fitti-Fatta Operation), 3060, 3105 (Taylor's and Bockarie's plan to invade Freetown), 3060 (Taylor and Bockarie plan's to attack Kono), 3542 (Taylor ordered Bockarie via Yeaten to release prisoners fr om Pademba Road Prison), 3543 (Taylor communicated directly with Bockarie), 4088-4089 (Taylor provided of herbalists), 4104, 4108 (Taylor instructed Bockarie to open a training base in Bunumbu, Kailahun District), 4356 (Taylor provided military personnel), 4828-4829 (Taylor provided Tamba with delivery of ammunition during Junta period), 4955 (Taylor sent supplies of materiel via intermediaries in 1998 and 1999), 5007, 5024-5025 (Taylor involved in the supply of military equipment to Bockarie on Bockarie's trips to Liberia in 1998), 5145 (Taylor transported ammunition from Liberia to Sierra Leone via, *inter alia*, Dopoe Menkarzon, Christopher Varmoh and Roland Duoh), 5374 (Taylor and the Magburaka Shipment), 5518-5519 (Taylor and the Burkina Faso Shipment), 5692, 5699 (Part of the materiel from the Burkina Faso shipment was taken by Rambo Red Goat to reinforce troops in Freetown).

412 Taylor Appeal, paras 169-171, 174-178 (Ground 8), 203, 205 (Ground 10), 276 (Ground 13), 311 (Ground 15), 485, 486, 493, 494, 500, 503, 509, 511, 539, 542, 556, 559 (Ground 23), 638 (Ground 26), 664 (Ground 28).

413 Taylor Appeal, para. 60.

414 Taylor Appeal, para. 500, *citing Nahimana* Appeal Judgment, para. 896, *Seromba* Appeal Judgment, para. 221.

415 Trial Judgment, paras 3120 (SAJ Musa contemplated as part of Bockarie/Taylor Plan), 3130 (Taylor told Bockarie to use "all means" to get Freetown), 3485 (Bockarie exercised effective command and control over Gullit during Freetown Invasion), 3486 (SAJ Musa's original plan was abandoned).

416 Trial Judgment, paras 4845 (Tamba delivery of ammunition during Junta period came from Taylor), 5406 (Bah acting on behalf of Taylor to meet with Bockarie and Johnny Paul Koroma to make arrangements for Magburaka Shipment), 5666 (materiel supplied by Taylor were used in the commission of crimes shortly after Operation Fitti-Fatta in mid-1998), 5126, 5130 (materiel from White Flower and was facilitated by Yeaten came from Taylor), 5559 (Taylor and the Magburaka Shipment), 5721 (materiel brought by Issa Sesay when Gullit's forces retreated from Freetown).

417 Trial Judgment, para. 4152 (Taylor told Bockarie that the RUF/AFRC should construct or re-prepare the airfield in Buedu).

418 Trial Judgment, para. 4247.

419 *See, e.g.*, Prosecution Response, paras 143, *citing* Trial Judgment, paras 3480-3482, 6965; 145-146; 152, *quoting* Trial Judgment, para. 3118 (SAJ Musa contemplated as part of Bockarie/Taylor Plan); 430, 431 (Bah acting on behalf of Taylor for the Magburaka shipment), 474, 476 (Materiel from White Flower and was facilitated by Yeaten came from Taylor), 551 (Taylor told Bockarie that the RUF/AFRC should construct or re-prepare the airfield in Buedu), 574, 575 (Taylor provided the RUF Guesthouse).

420 *Fofana and Kondewa* Appeal Judgment, paras 198, 200. *Accord Kupreskić* Appeal Judgment, para. 303 (The Appeals Chamber first notes that there is nothing to prevent a conviction being based upon [circumstantial] evidence. Circumstantial evidence can often be sufficient to satisfy a fact finder beyond reasonable doubt."); *Kordić and Čerkez* Appeal Judgment, para. 834 (rejecting challenge that finding on an element of the crime must have been based on direct evidence).

421 *Fofana and Kondewa* Appeal Judgment, para. 200. *Accord Čelebići* Appeal Judgment, para. 458 ("[I]f there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.").

422 *Sesay et al.* Appeal Judgment, para. 32, fn. 68. *Accord Galić* Appeal Judgment, para. 9, fn. 21; *Stakić* Appeal Judgment, para. 219; *Čelebići* Appeal Judgment, para. 458; *Kupreskić* Appeal Judgment, para. 303; *Kordić and Čerkez* Appeal Judgment, para. 834.

423 *Sesay et al.* Appeal Judgment, para. 32, fn. 68.

424 *See Stakić* Appeal Judgment, para. 219 ("If no reasonable Trial Chamber could have ignored an inference which favours the accused, the Appeals Chamber will vacate the Trial Chamber's factual inference and reverse any conviction that is dependent on it.").

425 *D. Milošević* Appeal Judgment, para. 20, *citing Ntagerura et al.* Appeal Judgement, paras 174-175 and *Mrkšić and Sljivančanin* Appeal Judgement, para. 217. *See* also *Mrkšić and Sljivančanin* Appeal Judgment, para. 325; *Halilović* Appeal Judgment, para. 130, *citing Vasiljević* Appeal Judgment, paras 2, 88, 124, 131 ("[a] specific factual finding may or may not be necessary to reach a conclusion beyond reasonable doubt as to the element of a crime, depending on the specific circumstances of the case and on the way the case was pleaded.").

426 Rule 89(B).

427 Taylor Appeal, paras 103-107 (Ground 6), 118-145 (Ground 7), 172, 173 (Ground 8), 153-161 (Ground 9), 185-193, 205-206 (Ground 10), 226-230, 238-242, 243, 248-251 (Ground 12), 264-268 (Ground 13), 308 (Ground 15), 570 (Ground 23), 619 (Ground 25), 637-640 (Ground 26), 659 (Ground 27).

428 Taylor Appeal, paras 185-193, 205-206 (Ground 10), 238-242, 243, 248-251 (Ground 12), 264-268 (Ground 13), 619 (Ground 25), 637-640 (Ground 26).

429 Taylor Appeal, paras 185-193, 205-206 (Ground 10).

430 Taylor Appeal, paras 238-242, 243, 248-251 (Ground 12).

431 Taylor Appeal, paras 264-268 (Ground 13).

432 Taylor Appeal, paras 637-640 (Ground 26).

433 Prosecution Response, para. 162 (Ground 10).

434 Prosecution Response, paras 164, 166 (Ground 10).

435 Prosecution Response, para. 207, 208 (Ground 12); in paras 549-550 (Ground 26) the Prosecution argues that the Trial Chamber provided a cogent basis for making its findings.

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436 Prosecution Response, para. 207 (Ground 12), 549-550 (Ground 26).

437 Prosecution Response, para. 222 (Ground 13).

438 Taylor Appeal, paras 103-107 (Ground 6), 118-145 (Ground 7), 172, 173 (Ground 8), 153-161 (Ground 9), 226-230 (Ground 12), 308 (Ground 15), 570 (Ground 23), 659 (Ground 27).

439 Taylor Appeal, paras 103-107 (Ground 6).

440 Taylor Appeal, paras 118-145 (Ground 7), 153-161 (Ground 9).

441 Taylor Appeal, paras 172, 173 (Ground 8).

442 Taylor Appeal, paras 226-230 (Ground 12).

443 Taylor Appeal, para. 308 (Ground 15).

444 Taylor Appeal, para. 570 (Ground 23).

445 *See infra* paras 326, 332.

446 Taylor Appeal, para. 659 (Ground 27).

447 *See, e.g.*, Prosecution Response, paras 78 (Ground 6), 92, 103 (Ground 7), 483, 484 (Ground 23).

448 *See, e.g.*, Prosecution Response, para. 77 (Ground 6).

449 *See, e.g.*, Prosecution Response, paras 80 (Ground 6), 93, 95, 97, 99, 100-101, 105, 106, 107, 110, 113 (Ground 7), 154 (Ground 8), 123-127, 129-130, 135 (Ground 9), 255-256 (Ground 15), 571 (Ground 27).

450 Prosecution Response, para. 85.

451 Taylor Appeal, paras 123-124, 136 (Ground 7).

452 Taylor Appeal, paras 123-124 (Ground 7).

453 Taylor Appeal, para. 136 (Ground 7).

454 Prosecution Response, para. 93.

455 Prosecution Response, para. 93.

456 *Sesay et al*. Appeal Judgment, para. 200, *citing Nahimana et al*. Appeal Judgment, para. 194, *Kvočka et al.* Appeal Judgment, para. 659.

457 *Sesay et al*. Appeal Judgment, para. 758. *Accord Kupreskić et al.* Appeal Judgment, para. 31 ("As the primary trier of fact, it is the Trial Chamber that has the main responsibility to resolve any inconsistencies that may arise within and/or amongst witnesses' testimonies. It is certainly within the discretion of the Trial Chamber to evaluate any inconsistencies, to consider whether the evidence taken as a whole is reliable and credible and to accept or reject the 'fundamental features' of the evidence.").

458 *Sesay et al.* Appeal Judgment, para. 32; *Fofana and Kondewa* Appeal Judgment, para. 34. *Accord Kupreskić et al.* Appeal Judgment, para. 30.

459 *Supra* paras 24-31.

460 *Compare* Taylor Appeal, paras 185-193, 205-206 (Ground 10) *and* Trial Judgment, paras 3486, 3611(xiii) (SAJ Musa's original plan was abandoned and Gullit's movements incorporated into the Bockarie/Taylor Plan, based on the evidence assessed in particular in paras 3118-3128 & 3373-3480). *Compare* Taylor Appeal, paras 238-242, 243, 248-251 (Ground 12) *and* Trial Judgment, paras 3606, 3611(xiv) (Bockarie was in frequent and daily contact via radio or satellite phone with Taylor in December 1998 and January 1999, either directly or through Benjamin Yeaten, based on the evidence assessed in particular in paras 3555-3567). *Compare* Taylor Appeal, paras 264-268 (Ground 13) *and* Trial Judgment, para. 3463 (Bockarie gave Gullit orders to execute Martin Moinama, and a group of captured ECOMOG soldiers near the State House, and both orders were carried out by Gullit, based on the evidence assessed in particular in paras 3458-3463). *Compare* Taylor Appeal, para. 619 (Ground 25) *and* Trial Judgment, paras 4175 & 4248(xxxvii) (Taylor provided safe haven to RUF combatants who fled to Liberia from Zogada, based on the evidence assessed in particular in paras 40, 4155, 4156, 4160-4162). *Compare* Taylor Appeal, paras 637-640 (Ground 26) *and* Trial Judgment, paras 4152 & 4248(xxxvi) (In 1998 Taylor told Bockarie that the RUF should construct or re-prepare the airfield in Buedu, based on the evidence in particular in paras 4144-4150).

461 *Sesay et al.* Appeal Judgment, para. 42.

462 *Sesay et al.* Appeal Judgment, para. 40.

463 *See Čelebići* Appeal Judgment, para. 498 ("The Trial Chamber is not obliged in its Judgement to recount and justify its findings in relation to every submission made during trial. It was within its discretion to evaluate the inconsistencies highlighted and to consider whether the witness, when the testimony is taken as a whole, was reliable and whether the evidence was credible. Small inconsistencies cannot suffice to render the whole testimony unreliable.").

464 *Brima et al.* Appeal Judgment, para. 154. *See* also *Brima et al.* Appeal Judgment, paras 249, 250; *Sesay et al.* Appeal Judgment, para. 264.

465 *Sesay et al*. Appeal Judgment, para. 264. *See* also *Brima et al.* Appeal Judgment, para. 155; *Sesay et al.* Appeal Judgment, para. 259. *See* further *Kupreskić et al.* Appeal Judgment, para. 31 ("The presence of inconsistencies in the evidence does not, *per se*, require a reasonable Trial Chamber to reject it as being unreliable.").

466 Trial Judgment, paras 172-177, *citing Brima et al.* Appeal Judgment, para. 121, *Brima et al.* Trial Judgment, paras 110-113, 362, *Sesay et al.* Trial Judgement, para. 490, *Rutaganda* Appeal Judgment, para. 29, *Kupreškić* Appeal Judgment, para. 31, *Čelebići* Appeal Judgment, para. 496, *Limaj* Trial Judgment, para. 15, *Brđanin* Trial Judgment, para. 26, *Krnojelac* Trial Judgment, para. 69.

467 *Sesay et al*. Appeal Judgment, para. 1050 *citing Krajišnik* Appeal Judgment, para. 139 and *Musema* Appeal Judgment, para. 20. *See* also *Muhimana* Appeal Judgment, paras 72, 99; *Nahimana et al.* Appeal Judgment, para. 554; *Bagosora and Nsengiyumva* Appeal Judgment, para. 269, *citing Nchamihigo Appeal Judgment,* para. 165; *Krajišnik* Appeal Judgement, para. 139; *Musema* Appeal Judgement, paras 18, 20.

468 *Compare* Taylor Appeal, paras 103-107 (Ground 6) *and* Trial Judgment, para. 3435 (Rambo Red Goat was able to join Gullit's troops in Freetown some time after Gullit's forces had captured the State House, based on the evidence assessed in particular in paras 3419-3420, 3429, 3426, 3431-3433, 3434). *Compare* Taylor Appeal, paras 118-145 (Ground 7), paras 153-161 (Ground 9) *and* Trial Judgment, para. 3129 (Sam Bockarie and Taylor jointly designed a two-pronged attack on Kono, Kenema and Freetown as the ultimate destination, based on the evidence assessed in particular in paras 3094, 3095-3098, 3101, 3103, 3104, 3105, 3110, 3111, 3114-3115, 3119, 3123, 3125). *Compare* Taylor Appeal, paras 172, 173 *and* Trial Judgment, para. 3120 (The possibility that SAJ Musa would participate in the execution

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of the Bockarie/Taylor Plan was contemplated by Bockarie and Taylor at the time they designed the Plan, based on the evidence assessed in particular in para. 3119). *Compare* Taylor Appeal, paras 226-230 (Ground 12) *and* Trial Judgment, paras 3606, 3611(xiv) (Bockarie was in frequent and even daily contact via radio or satellite phone with Taylor in December 1998 and January 1999, either directly or through Benjamin Yeaten and that Yeaten travelled to Sierra Leone to meet with Bockarie in Buedu during this period, based on the evidence assessed in particular in paras 3557, 3558, 3559-3561, 3563, 3564). *Compare* Taylor Appeal, paras 305, 308, 309 (Ground 15) *and* Trial Judgment, para. 3117 (Taylor told Bockarie that the operation should be "fearful" and that the RUF/AFRC should use "all means" in order to pressure the Government into negotiations for the release of Foday Sankoh, based on the evidence assessed in particular in paras 3113, 3115). *Compare* Taylor Appeal, para. 570 (Ground 23) *and* Trial Judgment, para 5096 (On Bockarie's trip to Monrovia around March 1999, he brought back a large shipment of materiel supplied by Taylor, based on the evidence assessed in particular in paras 5082, 5085, 5089, 5090, 5092). *Compare* Taylor Appeal, para. 659 (Ground 27) *and* Trial Judgment, paras 3914, 6930 ("448 messages" were sent by subordinates of Taylor in Liberia with Taylor's knowledge alerting the RUF when ECOMOG jets left Monrovia to attack AFRC/RUF forces in Sierra Leone, based on the evidence assessed in particular in paras 3907, 3908, 3909, 3912).

469 *Sesay et al.* Appeal Judgment, para. 761; *Brima et al.* Appeal Judgment, para. 268. *Accord Rukundo* Appeal Judgment, paras 102, 105, *citing Nchamihigo* Appeal Judgment, para. 121; *Karera* Appeal Judgment, para. 20; *Ntawukulilyayo* Appeal Judgment, para. 152, *citing Nchamihigo* Appeal Judgment, para. 165; *Krajišnik* Appeal Judgment, para. 139; *Musema* Appeal Judgment, paras. 18, 20.

470 *Compare* Taylor Appeal, paras 123-124 (Ground 7) *and* Trial Judgment, para. 3129 (In November/December 1998 Taylor and Sam Bockarie jointly designed a two-pronged attack on Kono, Kenema and Freetown as the ultimate destination, based on the evidence assessed in particular in paras 3089-3128).

471 The Defence argues the Trial Chamber failed to address Kabbah's testimony that one had to go to "the Hill" to get satellite phone reception, asserting that this testimony was contrary to evidence the Trial Chamber accepted that Bockarie was able to speak to Taylor by satellite phone "on the veranda." Taylor Appeal, para. 136. However, as the Prosecution points out in their response the witness did not testify that the only place which had satellite coverage was "the Hill." Prosecution Response, para. 107. *See* Transcript, Mohamed Kabbah, 15 September 2008, pp. 16176-16177. In addition, the Defence fails to note that Kabbah testified that network coverage depended on the weather, and whether a house would have coverage changed from one day to the next. *See* Transcript, Mohamed Kabbah, 16 September 2008, p. 16333.

472 Taylor Appeal, paras 57, 58 (Ground 4), 229 (Ground 12), 500, 501, 539 (Ground 23).

473 Taylor Appeal, paras 54, 61, 56.

474 Taylor Appeal, para. 55, *quoting Musema* Appeal Judgment, para. 209, *Zigiranyirazo* Appeal Judgment, para. 19.

475 Taylor Appeal, fns 85-91, 93 and 94 (Ground 4), *citing* Trial Judgment, paras 3833 (Evidence that Sankoh used forms of communication other than the NPFL radio network "does not exclude the possibility that he also used the NPFL radio network to pass messages on to Bockarie."), 4091 (Evidence of prior use of "herbalists" by the RUF "does not preclude and is not inconsistent with assistance by the Accused in the provision of this support."), 4466 (Contrary evidence by other witnesses deemed insufficient to "raise[] a reasonable doubt as to the possibility that Taylor sent Keita to Sierra Leone."), 4467 ("The Trial Chamber does not find that this negates the possibility that the Accused sent Keita to Sierra Leone."), 4835 ("neither TF1-585's failure to personally see Jungle bring ammunition during 1997 nor the lack of reference in Exhibits D-009 or P-067 to Tamba supplying the RUF is conclusive of the non-occurrence of this event."), 4956 ("The Trial Chamber does not consider the lack of co-operation amongst the intermediaries engaged in supply to be dispositive of the Accused's non-involvement or non-awareness."), 5523 ("The fact that Sankoh met with Diendre in no way precludes the possibility that the Accused made arrangements for this particular arms transaction," referring to the Burkina Faso shipment.), 5663 ("While evidence suggests that Mingo did capture materiel from the Fitti-Fatta operation, this would not have precluded him from also taking the materiel given to him by Bockarie for the Fittia-Fatta mission.").

476 Taylor Appeal, para. 56.

477 Taylor Appeal, paras 229 (Ground 12), 500, 501, 539 (Ground 23).

478 Prosecution Response, para. 34.

479 Prosecution Response, para. 35, *citing Musema* Appeal Judgment, para. 209.

480 This provision is in accordance with all major human rights instruments. *See, e.g.*, International Covenant on Civil and Political Rights, Article 14(2); African (Banjul) Charter on Human and Peoples' Rights, Article 7(1)(b).

481 *Ntagerura et al.* Appeal Judgment, para. 174; *Halilović* Appeal Judgment, para. 125; *Mrkšić and Sljivančanin* Appeal Judgment, para. 325. *See* also *D. Milošeć* Appeal Judgment, para. 21; *Blagojević and Jokić* Appeal Judgment, para. 226.

482 Trial Judgment, paras 158, 159, 180, 181.

483 Trial Judgment, para. 159.

484 Trial Judgment, para. 181.

485 Taylor Appeal, para. 55.

486 Taylor Appeal, paras 55-60.

487 Who testified to learning of a plan to attack Kono and other mining areas, but did not mention Freetown as an ultimate target of the plan. *See* Trial Judgment, para. 3097.

488 Who testified to learning of a plan to attack Kono and Makeni, but did not mention Freetown as an ultimate target of the plan. Trial Judgment, para. 3098.

489 Trial Judgment, paras 3096, 3097.

490 Taylor Appeal, para. 57 ("The 'negate the possibility' standard—applied to two witnesses whom the Chamber itself deemed credible sets a far higher threshold than 'raise a reasonable doubt.' The approach to these two witnesses led directly to the Chamber's finding that the 'Bockarie/Taylor plan' included 'Freetown as the ultimate destination.'").

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491 Trial Judgment, para. 3099 (emphasis added).

492 Trial Judgment, paras 3091-3098.

493 Trial Judgment, paras 3097 (TF1-567), 3098 (Mohamed Kabbah).

494 Trial Judgment, para. 3099.

495 Taylor Appeal, para. 58 fn. 85 (Ground 4), *citing* Trial Judgment, para. 3833 (The Defence states that "evidence that Sankoh used forms of communication other than the NPFL radio network [*sic*] 'does not exclude the possibility that he also used the NPFL radio network to pass messages on to Bockarie.'"), Taylor Appeal, para. 58 fn. 86, *citing* Trial Judgment, para. 4091 (The Defence states that "evidence of prior use of 'herbalists' by the RUF 'does not preclude and is not inconsistent with assistance by the Accused in the provision of this support.'"), Taylor Appeal, para. 58 fn. 93, *citing* Trial Judgment, para. 5523 (The Defence states that "'[t]he fact that Sankoh met with Diendre in no way precludes the possibility that the Accused made arrangements for this particular arms transaction,' referring to the Burkina Faso shipment on which the Chamber placed heavy reliance to convict Mr. Taylor of aiding and abetting."). Taylor Appeal, para. 58 fn. 94, *citing* Trial Judgment, para. 5663 (The Defence states that "[w]hile evidence suggests that Mingo did capture materiel from the Fitti-Fatta operation, this would not have precluded him from also taking the materiel given to him by Bockarie for the Fittia-Fatta mission.").

496 Evidence that Sankoh used forms of communication other than the NPFL radio network "does not exclude the possibility that he also used the NPFL radio network to pass messages on to Bockarie." Trial Judgment, para. 3833. Evidence of prior use of "herbalists" by the RUF "does not preclude and is not inconsistent with assistance by [Taylor] in the provision of this support." Trial Judgment, para. 4091. "The fact that Sankoh met with Diendre in no way precludes the possibility that [Taylor] made arrangements for [the Burkina Faso shipment]." Trial Judgment, para. 5523. "While evidence suggests that Mingo did capture materiel from the Fitti-Fatta operation, this would not have precluded him from also taking the materiel given to him by Bockarie for the Fittia-Fatta mission." Trial Judgment, para. 5663.

497 Taylor Appeal, para. 58, fn. 87, *citing* Trial Judgment, para. 4466 (the Defence states that "contrary evidence by other witnesses deemed insufficient to 'raise[] [*sic*] a reasonable doubt as to the possibility that Taylor sent Keita to Sierra Leone.'").

498 Trial Judgment, para. 4466 (emphasis added).

499 Taylor Appeal, para. 58, fn. 88, *citing* Trial Judgment, para. 4467 (the Defence states that "[t]he Trial Chamber does not find that this negates the possibility that the Accused sent Keita to Sierra Leone.").

500 Trial Judgment, para. 4467 ("The Trial Chamber notes that Isaac Mongor confirmed his prior statement upon cross-examination that Keita was not sent to Sierra Leone by the Accused, but that he did so in response to questioning about the other half of the statement put to him, relating to whether Keita was working for the Prosecution. He was more specifically asked about that part of the statement, which was the focus of inquiry by counsel. The Trial Chamber does not, for this reason, consider his response to have evidentiary weight, particularly as he was not further examined on this issue or was questioned as to how he received this information. Prosecution Witness TF1-367 testified that Keita was a ULIMO fighter who came from Liberia to the RUF 'as a friend', stating that Keita fought on the front lines with the RUF. *The Trial Chamber does not find that this negates the possibility that the Accused sent Keita to Sierra Leone*.") (emphasis added).

501 Taylor Appeal, para. 58, fn. 89, *citing* Trial Judgment, para. 4835 (the Defence states that "neither TF1-585's failure to personally see Jungle bring ammunition during 1997 nor the lack of reference in Exhibits D-009 or P-067 to Tamba supplying the RUF is conclusive of the non-occurrence of this event."). Taylor Appeal, para. 58, fn. 91, *citing* Trial Judgment, para. 4956 (the Defence states that "[t]he Trial Chamber does not consider the lack of co-operation amongst the intermediaries engaged in supply to be dispositive of the Accused's non-involvement or non-awareness.").

502 Trial Judgment, para. 4834.

503 Trial Judgment, para. 4835 (emphasis added).

504 Trial Judgment, para. 4955.

505 Trial Judgment, para. 4956 (emphasis added).

506 Taylor Appeal, para. 229 (Ground 12).

507 Taylor Appeal, para. 229 (Ground 12).

508 Taylor Appeal, para. 229, *quoting* Trial Judgment, para. 3564.

509 Taylor Appeal, para. 229.

510 Trial Judgment, para. 3564.

511 Taylor Appeal, para. 229.

512 Trial Judgment, para. 3564.

513 Trial Judgment, paras 3554-3564.

514 Trial Judgment, paras 3555-3557.

515 Trial Judgment, paras 3557-3561, 3563.

516 Trial Judgment, para. 3562.

517 Trial Judgment, para. 3564.

518 Trial Judgment, para. 3564.

519 Taylor Appeal, para. 538, *quoting* Trial Judgment, para. 5655.

520 Taylor Appeal, para. 501, *citing* Trial Judgment, para. 6913.

521 Trial Judgment, paras 5653-5659.

522 Trial Judgment, paras 5654-5657.

523 Trial Judgment, para. 5654.

524 Trial Judgment, para. 5656.

525 Trial Judgment, para. 180.

526 Taylor Appeal, paras 59, 60 (Ground 4), 165-167 (Ground 8), 500-503, 539 (Ground 23).

527 Taylor Appeal, para. 59, *citing* Trial Judgment, paras 3120, 3480, 3486, 3617, 5551, 5710.

528 Taylor Appeal, para. 59.

529 Taylor Appeal, paras 59, 60 (Ground 4), 165-167 (Ground 8), 500-503, 539 (Ground 23).

530 Prosecution Response, paras 32-37.

531 Taylor Appeal, para. 501 (Ground 23).

532 Taylor Appeal, para. 501 (Ground 23).

533 Trial Judgment, para. 5559 (emphasis added).

534 Trial Judgment, para. 5551 (emphasis added).

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535 It was in fact a Defence witness, Issa Sesay, whose testimony supported the likelihood of exclusivity. The Trial Chamber summarised his testimony as follows: "[Defence] Witness Issa Sesay testified that the only arms and ammunition that came to Sierra Leone during the Junta regime was the flight that landed in Magburaka. This was also the only stock of ammunition Sesay was aware of that the RUF would have had access to." Trial Judgment, para. 5541.

536 Trial Judgment, paras 5546-5552.

537 Trial Judgment, paras 5406-5409.

538 What was critical to the conviction for aiding and abetting were the findings, which the Trial Chamber did make beyond a reasonable doubt: (i) that Taylor was responsible for the delivery of the Magburaka shipment to the RUF/AFRC (Trial Judgment, paras 5406-5409); and (ii) that the materiel provided or facilitated by Taylor, including the Magburaka shipment in October 1997, was critical in enabling the RUF/AFRC's Operational Strategy to commit crimes (Trial Judgment, para. 6914). As the Trial Chamber concluded, and as this Chamber affirms, "the applicable law for aiding and abetting does not require that the Accused be the only source of assistance in order for his contribution to be substantial." *See infra* paras 518-521.

539 *See supra* para. 200.

540 *Ntagerura et al.* Appeal Judgement, para. 174; *Halilović* Appeal Judgement, para. 125; *Mrkšić and Sljivančanin* Appeal Judgment, para. 325. *Accord D. Milošević* Appeal Judgment, para. 21; *Blagojević and Jokić* Appeal Judgment, para. 226.

541 *D. Milošević* Appeal Judgment, para. 20 *citing Ntagerura et al.* Appeal Judgement, paras 174-175 and *Mrkšić and Sljivančanin* Appeal Judgement. para. 217. *Accord Mrkšić and Sljivančanin* Appeal Judgment, para. 325; *Halilović* Appeal Judment, para. 130, *citing Vasiljević* Appeal Judgment, paras 2, 88, 124, 131 ("[a] specific factual finding may or may not be necessary to reach a conclusion beyond reasonable doubt as to the element of a crime, depending on the specific circumstances of the case and on the way the case was pleaded").

542 Taylor Appeal, para. 59 (Ground 4).

543 Trial Judgment, para. 5721.

544 Trial Judgment, para. 5710 (emphasis added).

545 Trial Judgment, para. 5709.

546 *See* Trial Judgment, paras 3481-3486.

547 *See* Trial Judgment, paras 285-289 (Bobson Sesay), 359-372 (Issa Sesay).

548 Trial Judgment, para. 5711.

549 Taylor Appeal, para. 165 (Ground 8).

550 Trial Judgment, para. 3120.

551 Trial Judgment, paras 3481-3483.

552 Trial Judgment, paras 3484-3486.

553 *Halilović* Appeal Judgment, para. 128.

554 *See supra* paras 105-118.

555 Taylor Appeal, paras 100-102 (Ground 6).

556 Taylor Appeal, para. 101.

557 Prosecution Response, paras, 62-63, 67-68.

558 *See supra* para. 118.

559 Trial Judgment, para. 3378.

560 *Taylor* Reply on Judicial Notice, para. 7.

561 *Taylor* Reply on Judicial Notice, para. 8.

562 *Contra* Taylor Appeal, para. 101.

563 Taylor Appeal, paras 52 (Ground 3), 160 (Ground 9), 264-266 (Ground 13), 303, 310-311(Ground 15), 496, 549, 578 (Ground 23).

564 Taylor Appeal, paras 179 (Ground 8) (The Trial Chamber erred because it relied on circumstantial evidence of Karmoh Kanneh and Isaac Mongor which is uncorroborated hearsay to find that the possibility that SAJ Musa would participate in the execution of the Plan was contemplated by Bockarie and Taylor in the absence of providing a fully reasoned opinion and being especially rigorous in its assessment of the evidence.), 236 (Ground 12) (The Trial Chamber erred because it relied on TF1-516's hearsay evidence that Taylor was in direct contact with Bockarie during the Freetown invasion in the absence of providing a fully reasoned opinion and being especially rigorous in its assessment of such evidence.), 303 (Ground 15) (The Trial Chamber erred because it relied on the hearsay statement of Issac Mongor that Taylor told Bockarie to make the operation "fearful" in the absence of providing a fully reasoned opinion and being especially rigorous in its assessment of the evidence.).

565 Taylor Appeal, paras 264-266 (Ground 13) (The Trial Chamber erred because it based the finding that Bockarie ordered Gullit to execute captured ECOMOG soldiers on the misrepresented the testimony of Perry Kamara.), 310-311 (Ground 15) (The Trial Chamber erred because it based the finding that Taylor said to "use all means" to get Freetown on the mischaracterization of the testimony of TF1-371.).

566 Taylor Appeal, para. 160 (Ground 9) (The Trial Chamber erred because it found that the Bockarie/Taylor Plan included an advance on Freetown having accepted evidence it did not.).

567 Prosecution Response, para. 227, *citing Sesay et al.* Appeal Judgment, para. 40.

568 Prosecution Response, para. 265.

569 *Sesay et al.* Appeal Judgment, para. 344, *quoting Krajisnik* Appeal Judgment, para. 139.

570 *Sesay et al.* Appeal Judgment, para. 345, *quoting Krajisnik* Appeal Judgment, para. 139 (internal quotes omitted).

571 *See, e.g.,* Trial Judgment, paras 2571-2576, 2754-2755, 3619-3621, 4266-4267.

572 *See, e.g.,* Trial Judgment, paras 2577-2620, 2756-2830, 3622-3653, 4268-4364.

573 *See, e.g.,* Trial Judgment, paras 2621-2628, 2831-2862, 3654-3664, 4365-4393.

574 *See, e.g.,* Trial Judgment, paras 2629, 2863-2864, 3665-3666, 4394-4396.

575 *Compare* Taylor Appeal, paras 179, 236, 264-266, 303, 310-311 *and* Trial Judgment, paras 3089-3128, 3553-3605, 3458-3463.

576 *Sesay et al.* Appeal Judgment, para. 345. *See* also *Krajišnik* Appeal Judgment, para. 139; *Kvočka et al.* Appeal Judgment, para. 25 (reference omitted).

577 *Sesay et al.* Appeal Judgment, para. 345; *Brima et al.* Appeal Judgment, para. 268.

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578 Trial Judgment, para. 6905 ("including murders, rapes, sexual slavery, looting, abductions, forced labour, conscription of child soldiers, amputations and other forms of physical violence and acts of terror").

579 *See* Trial Judgment, paras 6790, 6793, 6905.

580 Trial Judgment, paras 6914, 6924, 6936, 6937, 6944, 6946, 6959.

581 Trial Judgment, paras 6885, 6949, 6950, 6969.

582 Taylor Appeal, para. 400, *citing* Trial Judgment, para. 6905.

583 Taylor Appeal, paras 402, 405, 406.

584 Taylor Appeal, paras 402, 419-424.

585 Taylor Appeal, paras 402, 430.

586 Taylor Appeal, paras 403, 459. *See* also paras 403, 406, 407, 415, 419, 459.

587 Taylor Appeal, para. 419.

588 Taylor Appeal, paras 403, 415, 420-422.

589 Taylor Appeal, paras 403, 406, 422, 430. *See* also Taylor Appeal, para. 417, *citing Perišić* Trial Judgment, Dissenting Opinion of Judge Moloto, para. 49 ("[I]t is important to recognize that situations during a war can change dramatically over time. What Perišić knew or thought he knew about the activities and propensities of the VRS during the initial break-up of the SFRY cannot be equated with his understanding of circumstances during later stages of the war.").

590 Prosecution Response, para. 323.

591 Prosecution Response, para. 369.

592 Prosecution Response, para. 328.

593 Prosecution Response, para. 328, *citing* Trial Judgment, paras 1979, 2005, 2006, 2017, 2021, 2025, 2026, 2031, 2032, 2038-2046, 2048, 2049, 2050-2053, 2055, 2056, 2068, 2082, 2088, 2122, 2132, 2138, 2139, 2151, 2162, 2172-2181, 2185, 2188-2192.

594 Prosecution Response, para. 328, *citing* Trial Judgment, paras 1657-1659, 1660, 1738, 1747, 1752-1754, 1764-1766, 1769, 1771, 1778, 1779, 1788, 1789, 1800, 1803, 1807, 1808, 1812, 1813, 1822, 1823, 1829, 1833, 1843, 1844, 1857-1864, 1870, 1873-1876.

595 Prosecution Response, para. 328, *citing* Trial Judgment, paras 931, 932, 971, 972, 999, 1015, 1016, 1144-1146, 1073-1075, 1189-1191, 1199-1201, 1202-1204, 1205-1207.

596 Prosecution Response, para. 328, *citing* Trial Judgment, paras 1596-1607.

597 Prosecution Response, para. 329, *citing* Sentencing Judgment, paras 70, 71, 75.

598 Trial Judgment, para. 511; *Sesay et al.* Trial Judgment, para. 79; *Brima et al.* Trial Judgment, para. 215. *See* also *Kunarac et al.* Appeal Judgment, para. 98 ("Contrary to the Appellants' submissions, neither the attack nor the acts of the accused needs to be supported by any form of 'policy' or 'plan'. There was nothing in the Statute or in customary international law at the time of the alleged acts which required proof of the existence of a plan or policy to commit these crimes."). *Compare* ICC Statute, Article 7(2)(a) ("'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, *pursuant to or in furtherance of a State or organizational policy to commit such attack*") (emphasis added). The Appeals Chamber has not previously addressed this issue, and as the Parties have not raised it in this appeal, declines to do so now.

599 A policy, plan or strategy may be a relevant factual consideration in determining the context in which the crimes were committed, the manner in which the crimes were committed and the effect of an accused's acts and conduct on the crimes committed, issues which may in turn be relevant to the individual criminal liability of an accused. *See* Statute, Article 6(1) ("A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime."). *See* also *Limaj et al.* Trial Judgment, para. 212 ("[E]vidence of a policy or plan is an important indication that the acts in question are not merely the workings of individuals acting pursuant to haphazard or individual design, but instead have a level of organisational coherence and support of a magnitude sufficient to elevate them into the realm of crimes against humanity."). *See* further paras 362-385.

600 Trial Judgment, paras 6790, 6791. *Compare* Trial Judgment, para. 6789 *with* Trial Judgment, para. 6790. *See* also Trial Judgment, paras 547, 548 ("the pattern of crimes by the RUF and AFRC which were directed against civilians persisted and intensified during this period"), 549 ("the pattern of conduct of the attacks"), 550 ("the evidence shows that the RUF and AFRC continued to commit crimes against civilians"), 551 ("The mistreatment of civilians continued into the later stages of the conflict."), 553 ("The pattern of mistreatment shows that crimes were not isolated or random, but rather formed part of a continuous campaign directed against civilians in communities that the RUF controlled. This pattern of mistreatment remained a feature of the RUF regime throughout the conflict"), 554-557, 558 ("Moreover, based on the pattern and organisation of the violence the evidence demonstrates beyond reasonable doubt that the attack was also systematic.").

601 Trial Judgment, paras 6790-6793. *See* also Trial Judgment, paras 549 ("AFRC and/or RUF fighters were explicitly ordered to kill civilians by commanders, burn their settlements and take their property"), 553 ("The RUF's use of forced civilian labour and physical violence in Kailahun District from 1996 until 2000 was continuous, organised and structured.").

602 Trial Judgment, paras 6789, 6793. *See* also Trial Judgment, paras 548 ("This mistreatment of civilians during junta rule demonstrates that the RUF and AFRC specifically targeted the civilian population in order to minimise resistance or opposition to the regime."), 549 ("the pattern of conduct of the attacks that were conducted with the aim of spreading fear amongst the population in order to control them and with the aim to call on the attention of the international community"), 551 ("Civilians continued to be intentionally targeted as sources of labour and fighters.").

603 Trial Judgment, para. 6905.

604 *See, e.g.*, Trial Judgment, paras 520-525, 531, 538, 544, 546, 553, 557.

605 Trial Judgment, para. 553.

606 Trial Judgment, para. 551.

607 *See, e.g.*, Trial Judgment, paras 1597-1607.

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608 The Defence does not address these crimes as part of its submissions and adopts a narrow view of the relevant crimes. *See* Taylor Appeal, paras 406, 407, 411, 415, 419, 430.

609 *See* Trial Judgment, para. 1970 ("The Trial Chamber has found that widespread and large scale abductions of civilians were carried out by the RUF and AFRC in Kenema District, Kono District, Kailahun District and in Freetown and the Western Area. In all of those areas civilians were used as forced labour."). From November 1996 until 2000 civilians were subjected to forced labour in Kailahun District. Trial Judgment, paras 547, 553.

610 See paras 531, 538, 546, 551, 557 for the Trial Chamber's general findings. The Trial Chamber further found the following specific crimes proved in the locations below:
Kenema District: In Tongo Fields between August 1997 and January 1998 a large but unknown number of civilians were forced to mine for diamonds (paras 1615-1657).
Kono District: In many locations in Kono District from at least January 1998 through to the end of the Indictment Period a large but unknown number of civilians were forced to work in the diamond mines (paras 1720-1738). In Tombodu from about June 1998 and throughout 1999/2000 a large but unknown number of civilians were forced to work in mines (paras 1740-1747). In various locations in and around Koidu Town, including Masingbi Rd, Five Five Spot and Superman Ground, from February 1998 onwards civilians were forced to mine diamonds (paras 1749-1752).

611 See paras 521-523, 538, 544, 547, 551, 553, 557 for the Trial Chamber's general findings. The Trial Chamber further found the following specific crimes proved:
Forced Farming and Food Finding: In Buedu from March 1998 to April 1999 civilians who owned cocoa and coffee farms were forced to farm. The RUF/AFRC took the produce and kept the sale proceeds (paras 1760-1766). In Buedu civilians were forced to go on food finding missions (paras 1760-1766). From 30 November 1996 to 2000 at least 50 civilians were forced to farm in or near Talia and an unknown number of women were forced to fish (paras 1796-1803). From 30 November 1996 to 2000 an unknown number of civilians were forced to work on swamp farms outside Giema (paras 1805-1808). In 1997 civilians were forced to work on a large swamp farm for Issa Sesay (paras 1805-1808). From about mid-March 1998 civilians were captured by the RUF/AFRC in Kono District and forced to go on food finding missions (paras 1662-1663). In Wondedu in about April 1998 civilians were forced to go on food finding missions (paras 1690-1691). In about April/May 1998 a civilian was forced to go on food finding missions in Kissi Town, Banya Ground and PC Ground (paras 1697-1710).
Carrying Loads: From about mid-March 1998 civilians captured by the RUF/AFRC in Kono District were forced to carry looted food and loads (paras 1662-1663). In Koidu in early 1998 civilians were forced to carry loads (paras 1665-1678). In March 1998 four civilians were forced to carry loads from Giema to Tombodu (paras 1683-1688). In Tombodu between February and April 1998 civilians were forced to carry loads (paras 1683-1688). In Tombodu in February/March 1999 civilians were forced to carry loads (paras 1683-1688). At PC Ground from about February 1998 civilians were forced to carry loads of looted property (paras 1697-1710). Civilians were forced to carry loads in Kono District (paras 1711-1718). In Buedu from about February 1998 until 1999 civilians were forced to carry loads (paras 1760-1766). In about November/December 1998 about 150 civilians were forced to carry arms and ammunition from Dawa to Sam Bockarie's house in Buedu, then to Superman Ground in Kono (paras 1767-1769). After March 1998 civilians were forced to carry arms and ammunition from Kailahun Town to Jokibu (paras 1817-1823). In August 1998 civilians were made to carry ammunition and wounded rebels from Koidu to Kailahun (paras 1817-1823).
Military Training: From February 1998 until the end of 1998 an unknown number of civilians, including children, were abducted and trained at Bunumbu Training Camp (paras 1368-1378, 1596(iv), 1782-1789). From about December 1998 onwards civilians were forced to undergo military training at Yengema Training Base (paras 1693-1694). At Masingbi Road in Koidu Town from mid-March until April 1998 civilians were forced to undergo military training (paras 1680-1681). Between Woama and Baima in Kono District 17 to 21 civilians were forced to undergo military training (paras 1711-1718). In Buedu from about February to July 1999 at least 19 civilians were forcibly trained (paras 1770-1771).
Domestic Chores: In Koidu in about March/April 1998 a civilian was forced to do domestic chores (paras 1665-1678). In Wondedu in about April 1998 civilians were forced to carry out domestic chores (paras 1690-1691). In Koidu Town, Superman Ground and Giema from about April until at least December 1998 a civilian was forced to perform domestic chores (paras 1697-1710). In Kissi Town, Banya Ground and PC Ground in about April/May 1998 a civilian was forced to do domestic chores (paras 1697-1710). In Buedu from about February 1998 until 1999 civilians were forced to do domestic chores (paras 1760-1766). In late 1998 a civilian was forced to perform domestic chores for Sergeant Foday's mother in Giema and did other work in Giema and Ngeigor (paras 1810-1813). In Mamboma from September 1998 to July 1999 civilians were forced to perform domestic and other duties (paras 1810-1813). In Kailahun Town from August to September 1998 civilians were forced to do domestic chores (paras 1825-1830). In Pendembu between May 1999 and July 2000 up to 500 abducted civilians were assigned to fighters and made to perform domestic duties (paras 1832, 1833).

612 Trial Judgment, para. 1654.

613 The Trial Chamber concluded that "members of the AFRC/RUF forces engaged in widespread and large scale abductions of civilians in Freetown and the Western Area and used them as forced labour to carry loads, perform domestic chores and destroy a bridge" (para. 1875). The Trial Chamber further found the following specific crimes proved (*see* Trial Judgment, paras 1849-1874):
On the way to Benguema on 25 December 1998 RUF/AFRC forces forced over 1000 civilians to carry loads. On about 30 December four captured civilians, one of them injured, were forced to process palm fruits in Mabureh Town. On 6 January 1999 RUF/AFRC forces forced over 50 civilians to carry bags of looted property from Calaba Town to Waterloo. The rebels told the civilians they would be shot if they tried to escape and killed one civilian who tried to run away. In January 1999 a civilian was locked in a kitchen at State House in Freetown under armed guards with about 50 other civilians for about four days without food and water. He was then chained and forced to carry a heavy bomb to Calaba Town after not having eaten for four days. In the third week of January 1999 civilians captured in Freetown moved with the rebels through Kissy carrying loads of looted

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goods. The civilians were guarded so that they would not escape. On about 22 January 1999 captured civilians were forced to cook and perform domestic chores. A civilian was threatened with death if he tried to escape. On 23 January 1999 during the retreat from Freetown RUF/AFRC members forced a civilian to carry goods that had been looted from the civilian's house to a camp at Kola Tree where other captured civilians were being held captive. On about 28 January 1999 this civilian, along with other civilians, was forced to carry loads to Regent. During the journey he was beaten and threatened with death if he tried to escape. On 22 January nine civilians were abducted by RUF/AFRC members in Calaba Town and one of the civilians was told to carry a bag. The civilians moved with the rebels to Allen Town and were held there for three days with 100 other captured civilians guarded by armed SBUs to prevent them escaping. In late January 1999 civilians were forced by RUF/AFRC members to carry heavy boxes of ammunition from Wellington to Allen Town. Some civilians were killed for refusing to carry the boxes. In Allen Town the civilians refused to carry the boxes any further and the rebels ordered them to strip naked and told them they would be killed. In about February to March 1999 RUF/AFRC commanders used a group of about 400 civilians to perform various duties including domestic chores such as cooking, laundry and pounding rice, as well as destroying a bridge.

614 Trial Judgment, para. 522. *See* also Trial Judgment, paras 1258, 1259.

615 Trial Judgment, para. 1654.

616 Trial Judgment, paras 1652, 1694. *See, e.g.*, Trial Judgment, paras 673-675, 717-722.

617 Trial Judgment, para. 1657.

618 Trial Judgment, para. 1694.

619 Trial Judgment, paras 520-522, 538, 546, 551, 553.

620 Trial Judgment, para. 553.

621 Bockarie and Issa Sesay were leaders of the RUF/AFRC during the Indictment Period. Bockarie led the RUF from March 1997, when Sankoh was arrested, until December 1999, when he left Sierra Leone after falling out with Sankoh. Evidence suggests that Bockarie was killed in May 2003. Trial Judgment, para. 154.

622 Issa Sesay was promoted to Battle Group Commander by Bockarie in March 1997, and promoted again by Bockarie to Acting Battlefield Commander in March 1998. During the Junta regime, he was a member of the Junta governing body. After Bockarie left Sierra Leone, Sankoh appointed Issa Sesay to be Battlefield Commander. When Sankoh was arrested in May 2000, Issa Sesay became interim leader of the RUF, and served as leader until the formal cessation of hostilities in January 2002. Issa Sesay was convicted by the SCSL and sentenced to 52 years imprisonment. Trial Judgment, paras 359, 360.

623 Trial Judgment, paras 520-523.

624 Trial Judgment, para. 522.

625 Trial Judgment, paras 531, 538, 546, 551, 557.

626 Trial Judgment, para. 1778.

627 Trial Judgment, paras 1368-1378, 1596(iv), 1782-1789. Between February and December 1998 children from Bunumbu were sent to the frontlines. Trial Judgment, paras 1473-1482, 1596(xix).

628 Trial Judgment, para. 1694.

629 See para. 555 for the Trial Chamber's general findings. In addition, the Trial Chamber found that rape was committed on a widespread and systematic basis in Kailahun District and on a widespread basis in Kono District, including in Koidu Town (paras 879-885, 887-888, 939). The Trial Chamber further found the following specific crimes proved:
Kailahun District: In Buedu and Kailahun Town beginning in February 1998 women were abducted in Kenema and raped in Buedu and Kailahun Town (paras 957-961). In Buedu from March 1998 to December 1999 captured women were raped (paras 963-966). In Kailahun Town from August to September 1998 a civilian was raped (paras 967-970). The Trial Chamber concluded that in Kailahun District between about 30 November 1996 and about 18 January 2002 an unknown number of women were raped (paras 971-972).
Kono District: In Koidu Town and Superman Ground in 1998 Sergeant Foday raped a civilian during the time she stayed in his house (paras 889-894, 931(ii)). In Koidu Town in February 1998 an RUF/AFRC member raped a civilian (paras 889-894, 931(i)). In Koidu Town between March to August 1998 several RUF/AFRC members raped a civilian (paras 895-898, 931(iii)). In Tombodu between March and June 1998 RUF/AFRC commanders including Alimamy Bobson Sesay raped an unknown number of women and girls (paras 900-905, 931(iv)). In Tombodu in about April 1998 commander Alhaji raped a civilian (paras 900-905, 931(v)). In Wondedu men under the command of Rocky raped an unknown number of other women (paras 907-908, 931(vi)). At Superman Ground in April 1998 rebels raped an unknown number of women (paras 911-914, 931(vii)). At PC Ground in or about April 1998 rebels, including Mongor, raped an unknown number of women (paras 916-919, 931(viii)). In March/April 1998 RUF/AFRC members engaged in repeated rape with a civilian (paras 920-930, 931(ix)).

630 See paras 547, 553 for the Trial Chamber's general findings. The Trial Chamber further found the following specific crimes proved:
Kailahun District: In Pendembu from November 1996 to July 2001 civilians were used as sexual slaves (paras 1039-1043). In Buedu and Kailahun Town from February to April 1998 an unknown number of women and girls that had been captured in Kenema District were used as sexual slaves (paras 1056-1060, 1074(i)). In Buedu from March 1998 to December 1999 an unknown number of women and girls were used as sexual slaves (paras 1062-1066, 1074(ii)). In Kailahun Town between August and September 1998 a civilian was used as a sexual slave (paras 1067-1072, 1074(iii)).
Kono District: In Wondedu in April 1998 an unknown number of women and girls were used as sexual slaves (paras 1093-1094, 1145(v)). In Koidu Town in February 1998 an unknown number of women were used as sexual slaves (paras 1095-1098, 1145(i)). In Koidu Town in March to June 1998 an unknown number of women and girls were used as sexual slaves (paras 1099-1102, 1145(ii)). Throughout Kono District, and in particular at PC Ground and Superman Ground, in about April 1998 an unknown number of women were used as sexual slaves (paras 1103-1108, 1145(iii)). In Koidu Town between March and August 1998 a civilian was used as a sexual slave (paras 1110-1118, 1145(iv)). In Koidu Town between about March and August 1998 a civilian was used as a sexual slave (paras 1120-1127, 1145(vi)). At Superman Ground between about April and October 1998 a civilian was used as a sexual slave (paras 1129-1132, 1145(vii)). Near Yegbema and Sawoa in March/April 1998 a civilian was used as a sexual slave (paras

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1133-1143, 1145(viii)).
Freetown and Western Area: In Benguema until about March 1999 an unknown number of women and girls were used as sexual slaves (paras 1157-1163, 1189(i)). In Wellington, Calaba Town and Benguema between 22 January and 10 March 1999 members of the RUF/AFRC used an unknown number of civilians as sexual slaves (paras 1165-1169, 1189(ii)). In Allen Town between about late January and early April 1999 a rebel used a civilian as a sexual slave (paras 1171-1179, 1189(iii)). In Calaba Town, Benguema and Four Mile between 22 January and about March 1999 a civilian was used as a sexual slave (paras 1181-1187, 1189(iv)).

631 Trial Judgment, para. 524. *See* also Trial Judgment, para. 1043.

632 Trial Judgment, para. 2052.

633 Trial Judgment, para. 524.

634 Trial Judgment, para. 2052.

635 Trial Judgment, paras 1089, 1902.

636 Trial Judgment, para. 1108.

637 Trial Judgment, paras 1155-1156. *See* also the Trial Chamber's further findings of specific crimes proved in paras 1157-1163, 1165-1169, 1171-1179, 1181-1187.

638 Trial Judgment, para. 2035.

639 Trial Judgment, para. 2036.

640 Trial Judgment, para. 2036.

641 Trial Judgment, para. 2035.

642 Trial Judgment, para. 2052. Witness Koker testified that in Buedu, CO Victor Kallon brought a woman who had been subjected to sexual slavery to his office saying that she had disrespected him. He then stripped her to her underwear and beat her.

643 Trial Judgment, para. 2053.

644 Trial Judgment, paras 2035, 2037, 2052, 2053.

645 Trial Judgment, paras 2033-2038, 2052, 2053.

646 Trial Judgment, paras 901, 1041, 1043.

647 Trial Judgment, para 1089. In about February/March 1998, following the retreat from Freetown after the Intervention, JPK was unable to pay his fighters, and thus ordered "Operation Pay Yourself", in which RUF/AFRC fighters engaged in extensive looting. Trial Judgment, para. 49.

648 Trial Judgment, para 1083.

649 Alimamy Bobson Sesay provided clear and reliable evidence of how commanders captured women, forced them to have sex with commanders and of the coercive environment in which such acts took place. In Tombodu between March and June 1998 commanders, including Bobson Sesay, raped an unknown number of women. (Trial Judgment, para. 904). Isaac Mongor testified that RUF/AFRC fighters and commanders, including himself, captured women, who were under the sole control of the fighters, and forced them to engage in sexual intercourse and made them their "wives." (Trial Judgment, paras 1104-1106). *See* also the following findings made by the Trial Chamber: the rape of girls by rebels led by Captain Blood (paras 991, 992), sexual slavery perpetrated by commander Rocky (para. 1093), the use of a civilian as a sexual slave by Major Arif (para. 1169), a civilian being kept as a sexual slave by Colonel B (para. 1187).

650 Trial Judgment, para. 2175.

651 Trial Judgment, para. 1040.

652 Trial Judgment, paras 1041, 1043.

653 Trial Judgment, para. 1605. The Trial Chamber further found the following specific crimes proved:
Tonkilili District: At Kangari Hills continuously and throughout the period from early 1996 until May 1997 an unknown number of children were abducted and conscripted into the RUF/AFRC (paras 1366-1367, 1596i).
Kailahun District: In Bunumbu from about February until the end of 1998 an unknown number of children were abducted and trained by the RUF/AFRC. Children were first screened into SBUs and SGUs based on age and health. After military training they were sent to the front lines to fight or were assigned as bodyguards (paras 1368-1378, 1596iv). In about April/May until about July/August 1998 a child was abducted from outside of Koidu Town in Kono and trained in Bunumbu in Kailahun District (paras 1379-1393, 1596ii). From February/March through until about November/December 1999 a child was abducted in Wellington in Freetown and then forced to train as a child soldier in Kailahun District, as well as sent to Makeni in Bombali District, to do house chores for Issa Sesay and his wife (paras 1403-1411, 1596iii). In Bunumbu between February and December 1998 children were sent to the frontlines and forced to participate in food finding missions armed with knives and sticks, and on one occasion a gun. The children beat and killed civilians if they met with resistance (paras 1473-1482, 1596xix, xx). In Kailahun District from 1996 to 2000 children were abducted and then trained. They carried guns and followed commanders (paras 1483-1486, 1596xxi).
Kono District: In and around Koidu Town after 14 February 1998 an unknown number of children were conscripted into the RUF/AFRC and forcefully used as reinforcements (paras 1412-1422, 1596vii). At Superman Ground during March 1998 an unknown number of children that had been abducted from villages near PC Ground were trained and subsequently distributed to commanders (paras 1412-1422, 1596vi). On Masingbi Road between mid-March and April 1998 an unknown number of children were conscripted into the RUF/AFRC (paras 1412-1422, 1596ix). After April 1998 an unknown number of children were conscripted into the RUF/AFRC. Trainees were sent on food finding missions accompanied by gunmen (paras 1412-1422, 1596viii). In Yengema in December 1998 onwards an unknown number of children were conscripted into the RUF/AFRC (para. 1423-1424, 1596v). In Sawoa in February/March 1998 a child was used to amputate the hands of five men and to chop a civilian's arm (paras 1488-1490, 1596xxiii). In Tombodu in December 1999 an unknown number of children were used to guard mining (paras 1494-1495, 1596xxiv). In Tombodu, Yomandu and Masingbi Road in mid-1998 children were used by commanders Alimamy Bobson Sesay and Bomb Blast to amputate the limbs of civilians and to capture girls to detain for sexual purposes (paras 1498-1505, 1596xxv). At Igbaleh/Kamachende and Wondedu in about April 1998, on the orders of Rocky, SBUs decapitated men Rocky had just killed. SBUs set five houses on fire after Captain Banya instructed them to "go and light candles" (paras 1498-1505, 1596xxvi). In Tongbodu in mid-April 1998 a boy was ordered to kill a civilian (paras 1498-1505, 1596xxvii). In Bombafoidu in mid-April 1998 a boy ordered a civilian to undress (paras 1498-1505, 1596xxviii).
Bombali District: From about August to December 1998 an

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SBU carried a gun and marched together with other troops from Kailahun to Kono District. The SBU fought during attacks in Koinadugu and Bombali Districts and acted as a bodyguard to a rebel named "Blood". Gbundema passed an order for a house to be burned down and the SBU did it together with Blood (paras 1530-1541, 1596xxxvi). An unspecified number of months before 6 January 1999 a child was abducted in Bonoya and forcibly conscripted into the RUF/AFRC under the command of SAJ Musa and forced to carry items looted from civilians (paras 1440-1446, 1596xiv). In about July to August 1999 a child that had escaped the RUF/AFRC was again abducted in Kamayusufu and then conscripted into the RUF/AFRC (paras 1447-1450, 1596xv). At Camp Rosos in July 1998 an unknown number of children that had been abducted during an attack on Karina were trained, and small boys were assigned to the wives of commanders to do "small works" (paras 1433-1434, 1596xi). In Makeni in May 2000 approximately 145 children were abducted from a care centre and conscripted into the RUF/AFRC (paras 1435-1439, 1596xii, xiii). In or about July 1998 an unknown number of children were used to perform "small works" for commanders' wives before being trained. After training SBUs took part in patrols, food finding missions, ambushes and participated in attacks on armed forces. In or about August/September 1998 an unknown number of children were trained at Camp Rosos. SAJ Musa sent SBUs led by Major O-Five as reinforcements for the Freetown Invasion (paras 1520-1524, 1596xxxiv). At Teko Barracks in Makeni during February 1998 an unknown number of children were used as bodyguards for commanders and committed crimes during Operation Pay Yourself (paras 1525-1526, 1596xxxv). At Rosos between July and October 1998 an unknown number of children participated in burnings and amputations (paras 1527-1529). In Rosos after September 1998 Alhaji assembled civilians, including a child, to go on an armed food-finding mission to loot food from civilians (paras 1542-1547, 1596xxxvii). At an unknown date after 7 July 1999 a child soldier was used in an attack on Kabala by members of the RUF/AFRC under the command of Issa Sesay and Superman (paras 1548-1553, 1596xxxviii). From September to December 1998 a child carried ammunition and a gun for commander Kabila during a journey. The child also killed civilians on Kabila's orders, set fire to a deserted house in a village after SAJ Musa ordered it burned, and partook in the capture of a girl who was then raped by Kabila (1554-1565, 1596xxxix).

Port Loko District: From January until at least April/May 1999 a child was abducted and conscripted as a child soldier (1451-1456, 1596xvi). In April/May 1999 a child was sent on a food-finding mission during which she looted civilian property, used a weapon and killed a civilian woman (1506-1509, 1596xxix).

Freetown and Western Area: In Freetown in January 1999 a child attempted to amputate the hands of a civilian (paras 1566-1575, 1596xliii). In Benguema from the end of January until March 1999 an unknown number of children were conscripted into the RUF/AFRC. The children wore military uniforms, carried guns and followed commanders. Every commander had a small boy and commanders were ordered to train them to help repel enemy attacks. The small boys were trained individually and taken on patrols. Children attached to commanders such as Gunboot, Tina Musa and Five-Five were sent to flog civilians who had committed crimes (paras 1576-1582, 1596xlii). In Freetown in January 1999 a child carried ammunition and looted a store. The child held a gun to facilitate Adama Cut Hand amputating two civilian men, and with another child amputated the arms of two civilian men and looted their store (paras 1583-1594, 1596xliv).

Kenema District: Between May 1997 and February 1998 an unknown number of children were used by the RUF/AFRC Junta to guard mining sites in Tongo Fields to ensure that civilians worked hard and did not escape. Sam Bockarie ordered SBUs to shoot and kill people who took "gravel" without permission (paras 1465-1468, 1596xvii). Bockarie was accompanied by a convoy of adult and child combatants aged between 12 and 14 years who safeguarded his physical safety and collected diamonds (paras 1465-1468, 1596xviii).

Koinadugu District: In April or May 1999 a child was sent on a food finding mission in which she looted property, and killed a civilian woman (paras 1506-1509). In Kondembaia between March and May 1998 children with guns followed the boss's command to burn down houses in the village (paras 1510-1512, 1596xxxii). In Koinadugu District after April or May 1999 a child was sent to fight, to kill civilians and to loot property (paras 1513-1516).

654 Trial Judgment, para. 1364.

655 Trial Judgment, para. 1602.

656 Trial Judgment, para. 1600.

657 Trial Judgment, para. 1600.

658 Trial Judgment, para. 1601.

659 *See, e.g.*, Trial Judgment, paras 1458, 1459, 1465-1468, 1494, 1495.

660 *See, e.g.*, Trial Judgment, paras 1460, 1461, 1463, 1464, 1368-1378, 1403-1411, 1412-1422, 1433, 1434, 1465-1468, 1483-1486, 1520-1524, 1525, 1526, 1530-1541.

661 *See, e.g.*, Trial Judgment, paras, 1213-1216, 1368-1378, 1412-1422, 1440-1446, 1462, 1465-1468, 1473-1482, 1488-1490, 1498-1505, 1506-1509, 1510-1512, 1513-1516, 1520-1524, 1525-1526, 1527-1529, 1530-1541, 1542-1547, 1548-1553, 1554-1565, 1566-1575, 1576-1582, 1583-1594.

662 Trial Judgment, para. 1598.

663 Trial Judgment, para. 1253.

664 Trial Judgment, para. 1387.

665 Trial Judgment, para. 1242.

666 Trial Judgment, para. 1599.

667 Trial Judgment, paras 1242, 1369, 1599.

668 Trial Judgment, para. 1603.

669 Trial Judgment, para. 1597.

670 Trial Judgment, paras 1603.

671 Trial Judgment, paras 1969 (the primary purpose of conscripting and using child soldiers was military), 1971 (the primary purpose behind the commission of abductions and forced labour was utilitarian or military in nature).

672 *See infra* paras 310-314, 319-323, 327, 340, 342, 343.

673 Trial Judgment, paras. 2033-2038, 2052, 2053.

674 Trial Judgment, paras 1969, 1971.

675 *See supra* para. 267, fn. 653.

676 Trial Judgment, para. 518.

677 Trial Judgment, para. 518.

678 Trial Judgment, para. 6790.

679 Trial Judgment, para. 2553.

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680 Trial Judgment, para. 2560.

681 Foday Sankoh was leader of the RUF by 1991 and remained leader throughout the Sierra Leonean Civil War, even during periods in which he was detained. *See* Trial Judgment, paras 2320, 6772, 6774, 6784.

682 Trial Judgment, para. 2553.

683 Trial Judgment, para. 2554.

684 Trial Judgment, para. 39.

685 Trial Judgment, para. 2554.

686 Trial Judgment, para. 2534.

687 Trial Judgment, para. 2539.

688 Trial Judgment, para. 2531.

689 Trial Judgment, para. 2541.

690 Trial Judgment, para. 42.

691 Trial Judgment, para. 42.

692 Trial Judgment, para. 6749. Johnny Paul Koroma remained leader of the AFRC through much of the Indictment Period, although he was detained by Sam Bockarie in late February/early March 1998. At that time, he was arrested, and his wife was sexually assaulted. Bockarie placed JPK under house arrest in Kangama village near Buedu where he remained until mid-1999. Trial Judgment, para. 6754.

693 Trial Judgment, para. 44.

694 Foday Sankoh was arrested and detained in Nigeria in March 1997. Sam Bockarie was appointed the acting leader in his absence, and continued to serve as leader of the RUF until 1999. *See* Trial Judgment, paras 6480, 6751.

695 Trial Judgment, para. 6749.

696 Trial Judgment, para. 43. The executive body of the Junta Government was the Supreme Council, in which JPK and Sankoh were appointed Chairman and Vice-Chairman, respectively. As Sankoh was in custody in Nigeria, Lieutenant Colonel SAJ Musa served as Acting Vice-Chairman in Sankoh's absence. Although the AFRC and RUF had an integrated organisational structure for the government, they did not integrate their military command structures at this point. (Trial Judgment, para. 6750).

697 Trial Judgment, paras 6871, 6880.

698 Trial Judgment, para. 548.

699 Trial Judgment, para. 548.

700 Trial Judgment, para. 527.

701 Trial Judgment, para. 527.

702 Trial Judgment, para. 554.

703 Trial Judgment, para. 548.

704 Trial Judgment, para. 530.

705 The Trial Chamber found that after the 25 May 1997 overthrow of the Kabbah Government by the Junta forces, a large contingent of RUF/AFRC forces were based in Kenema Town until the Intervention in mid-February 1998 when they were forced to flee the area. The RUF forces were led by Bockarie and the AFRC by Eddie Kanneh. Notwithstanding separate command structures the two groups worked in collaboration with each other during this period. From May 1997 to February 1998 many civilians in the District suspected of supporting or cooperating with the CDF were murdered, and/or had their property looted or destroyed by the RUF/AFRC forces. On 11 August 1997, under the command of Issa Sesay, Akim and Bockarie, the RUF/AFRC attacked and took control of Tongo Fields, looting property and capturing civilians to forcibly mine diamonds for them, in the process killing civilians who refused to cooperate. The Trial Chamber concluded that in Kenema District between about 25 May 1997 and about 31 March 1998 RUF/AFRC members murdered an unknown number of civilians (paras 585, 586, 643, 1649).

706 Trial Judgment, para. 617.

707 The Trial Chamber found the following specific crimes proved in the locations below:
Kenema Town: In front of the NIC building in about September 1997 Bockarie shot and killed a farmer accused of being a Kamajor in full view of the public, announcing that he would do the same to all Kamajors, thereby sending a clear and unequivocal message to the civilian population not to associate with the Junta's enemies (paras 598-600). On Hangha Street in December 1997 RUF/AFRC fighters killed a civilian suspected of being a member of the CDF. The civilian's body was disembowelled, his entrails used as a checkpoint and his body left on display for three days (paras 604-606). In early February 1998 RUF/AFRC forces led by Bockarie detained, tortured and then killed a number of prominent civilians suspected of being Kamajor supporters (paras 611-624).
Tongo Fields: In August 1997 in Tongo Fields RUF/AFRC fighters led by Bockarie killed three civilians accused of being Kamajors at a time when the RUF/AFRC forces were under threat of attack from ECOMOG and the Kamajors, the murders done with the primary purpose of instilling terror in the civilian population by making an example of would be enemies of the Junta forces, thereby guaranteeing civilian loyalty (paras 625-627).
Bumpe: On the outskirts of Tongo Fields on about 8 September 1997 RUF/AFRC fighters killed 17 civilians as revenge killings following military losses and justified the killings by branding the innocent civilians "Kamajors" or "Kamajor collaborators" (paras 628-632).
Panguma: In September 1997 RUF/AFRC fighters killed two civilians as revenge killings following military losses and justified the killings by branding the innocent civilians "Kamajors" or "Kamajor collaborators" (paras 628-632).

708 The Trial Chamber found the following specific crimes proved in the locations below:
Kenema Town: The RUF/AFRC killed a civilian to steal his property and to terrorise other civilians who would similarly attempt to resist looting (paras 588-589). At the Police Station in late May or June 1997 RUF/AFRC fighters acting under Bockarie's orders, and in the presence of senior commander Eddie Kanneh, killed three suspected burglars who had not been charged in a court of law. The killings were in full view of the police personnel and members of the public, and the bodies were left on display for the rest of the day to serve as an example to the residents of Kenema Town (paras 592-597). In front of Capital Cinema in November 1997 Bockarie shot and killed two suspected thieves who had not been properly tried by a court of law, leaving their bodies in full view of the public for three days before taking them away (paras 601-603). In Sombo Street a few months before the Intervention, Bockarie killed a suspected thief and publicly exhibited the corpse on the street to instil terror (paras 607-610).
Tongo Fields area: During the Junta's occupation of Tongo Fields RUF/AFRC child soldiers under the command of

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Bockarie killed eight civilian miners to guarantee the continuing servitude of other miners (paras 633-636). At Cyborg Pit between 11 August 1997 and January 1998 RUF/AFRC guards killed an unknown number of civilian miners, including a child, to guarantee the continuing servitude of other miners (paras 637-641).

709 Trial Judgment, paras 596, 597, 602, 603, 605, 606, 607-610.

710 Trial Judgment, paras 635, 636, 640, 641.

711 Trial Judgment, para. 1979.

712 Trial Judgment, para. 548.

713 Trial Judgment, para. 48. *See* also Trial Judgment, para. 5550.

714 Trial Judgment, para. 48.

715 Buedu in Kailahun District was Bockarie's headquarters following the Intervention.

716 Trial Judgment, para. 49. Around this time, Johnny Paul Koroma appointed Sam Bockarie as Chief of Defence Staff, which gave Bockarie the overall authority over the RUF/AFRC forces. At this point, the alliance was restructured, and the command structure became unified; each group led by an RUF commander was to have an AFRC deputy, and each group commanded by an AFRC commander was to have an RUF deputy. This resulted in the RUF assumption of command over the RUF/AFRC forces. Trial Judgment, para. 6753.

717 Trial Judgment, para. 5550.

718 Trial Judgment, para. 2863. *See* also Trial Judgment, para. 3611(ii).

719 Trial Judgment, para. 52. Following the capture of Koidu Town, JPK travelled to Buedu to meet with Sam Bockarie. Bockarie then arrested him on suspicion of attempting to leave Sierra Leone with a large quantity of diamonds. Bockarie then assumed complete control over the RUF/AFRC forces. Trial Judgment, para. 53. *See* also Trial Judgment, paras 2847-2850.

720 Trial Judgment, para. 48.

721 Trial Judgment, para. 48.

722 Trial Judgment, para. 54. *See* also Trial Judgment, para. 2927.

723 Trial Judgment, paras 534, 555.

724 Trial Judgment, paras 534, 539.

725 Trial Judgment, para. 539.

726 For the Trial Chamber's findings of specific acts of terror proved in Kono District see paras 1980-2049. For the Trial Chamber's general findings on crimes in Kono District, see paras 534, 555.

727 The Trial Chamber concluded that between about 1 February 1998 and about 31 January 2000, in various locations in Kono District members of the RUF/AFRC murdered an unknown number of civilians and committed acts of cruel treatment and other inhumane acts against an unknown number of civilians (paras 749, 1231). The Trial Chamber further found the following specific killings, mutilations and burnings proved in the locations below:
Koidu Town: At Yardo Road in early March 1998 RUF/AFRC forces acting on the orders of SAJ Musa, JPK and Issa Sesay, shot and killed an unknown number of civilians (paras 649-663). At Hill Station in early March 1998 commander Superman shot and killed 13 civilians including men, women and children with the primary purpose of instilling terror in the civilian population (paras 649-663). At Superman Compound in early March 1998 RUF/AFRC forces acting under the orders of Superman shot and killed a woman, tortured to death an elderly man and executed an unknown number of abducted civilians with the primary purpose of instilling terror in the civilian population (paras 649-663). Between April and May 1998 during an attack on Koidu Town the following incidents took place: commander Rocky, acting under the orders of a commander called Rambo, executed 101 captured men and had their bodies decapitated; SBUs acting under the orders of Rocky dismembered then killed a young boy and threw his body into a pit latrine; and at Sunna Mosque RUF/AFRC forces shot and killed a civilian. These crimes were committed for the primary purpose of instilling terror in the civilian population (paras 664-672). In late February/March and late April/May 1998 burnings were intentionally directed against civilians or their properties with the primary purpose of spreading terror amongst the civilian population (paras 1991-2006).
Bumpe: Between March and June 1998 RUF/AFRC forces acting under the orders of several commanders including Kallay, Bomb Blast, Superman, Sam Bockarie, Morris Kallon, Rocky and others, killed an unknown number of civilians with the primary purpose of instilling terror in the civilian population (paras 676-684). Civilian houses were burnt with the primary purpose of spreading terror amongst civilian population (paras 2028-2031).
Tombodu: In about March or April 1998 RUF/AFRC forces massacred more than 20 civilians with the primary purpose of instilling terror in the civilian population (paras 685-687). In about April 1998 RUF/AFRC forces led by Savage and with the approval of commanders Superman and Bomb Blast, killed 63 civilians with primary purpose of instilling terror in the civilian population (paras 688-692). In April 1998 RUF/AFRC forces under the orders of Alhaji killed 56 civilians with the purpose of instilling terror in the civilian population (paras 693-698). In about March to June 1998 Alimamy Bobson Sesay and other RUF/AFRC commanders commanded SBUs to amputate the hands of civilians. Commander Savage amputated the hands of civilians helped by SBUs (paras 1213-1217). In February/March 1998 civilian houses were burnt with the primary purpose of spreading terror (paras 2008-2017).
Kayima: In mid 1998 an unknown number of people "starting at Kayima" were mutilated by having "RUF" carved onto them, and in July 1998 18 people had the words "RUF" and/or "AFRC" carved into them (paras 1219-1222).
Foendor near Tombodu and Tombodu: Between April to May 1998 RUF/AFRC fighters pretending to be ECOMOG beheaded an unknown number of civilians including two children, and soon thereafter, an RUF/AFRC fighter killed a man by slitting his throat. RUF/AFRC forces under the command of Alhaji also killed three civilians. These crimes were committed for the primary purpose of instilling terror in the civilian population (paras 699-704).
Koidu Gieya: In about May/June 1998 RUF/AFRC fighters killed an unknown number of civilians including children and one Kamajor to instill terror in the civilian population (paras 705-710).
Koidu Buma: In May/June 1998 RUF Rambo killed 15 civilians with the approval of commanders Bomb Blast, Bazzy and Superman with the primary purpose of instilling terror in the civilian population (paras 711-713).
Yengema: In March or April 1998 RUF/AFRC forces under

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the command of Tito, and with the approval of patrol commander Bomb Blast, killed an unknown number of civilians with the primary purpose of instilling terror in the civilian population (paras 714-716).
Paema or Peyima: In around March/April 1998 RUF/AFRC members killed a number of civilians with the primary purpose of instilling terror in the civilian population (paras 723-730).
Bomboa Fuidu: In April 1998 RUF/AFRC rebels killed several civilians with the primary purpose of instilling terror in the civilian population (paras 731-736).
Njaima Nimikoro or Nimikoro: In April 1998 RUF/AFRC members, acting in accordance with the orders of commanders including Sam Bockarie, Morris Kallon, Rocky, Cobra and Bobby killed an unknown number of civilians, including seven senior citizens, with the primary purpose of instilling terror in the civilian population (paras 739-740).
Mortema: On about 12 June 1998 RUF/AFRC rebels led by "Fixo Bio" executed 17-25 civilians at the Bull residence in Mortema with the primary purpose of instilling terror in the civilian population (paras 737-747).
Sewafe: Civilian houses were burnt for the primary purpose of terrorising the civilian population (paras 2019-2021).
Wondedu: Between April and November 1998 "RUF" and "AFRC" were carved into the bodies of an unknown number of captive civilians and commander Banya knocked out the teeth of a captive (paras 1225-1230). After April 1998 at least 5 houses were burnt to spread terror among the civilian population (paras 2023-2026).
Various locations: Credible evidence of the murder of civilians in a number of locations within Kono District including Baima, Goldtown, Yekeyor, Kondeya, Mambona, and others (para. 748).

728 For the Trial Chamber's findings on acts of terror proved in Kailahun District see paras 2050-2056. For the Trial Chamber's findings on crimes committed in Kailahun District, see paras 547, 553, 768, 955-961, 962-966, 967-970, 1039-1043, 1056-1060, 1067-1072, 1368-1378, 1473-1482.

729 Following the retreat of the RUF/AFRC fighters from Freetown and their regrouping at Masiaka, JPK announced "Operation Pay Yourself", resulting in a campaign of extensive looting which continued throughout the movement of the RUF/AFRC troops during this period. In around May 1998, fighters burnt homes, looted and killed civilians as part of "Operation No Living Thing" in Kenema. In mid-1998 fighters raped, killed and/or mutilated and rebels burned houses and looted property as they specifically targeted civilians en route from Kono District to Bombali and Kambia District. In late-1998, the RUF/AFRC instituted a campaign called "Operation Spare No Soul" in which fighters were encouraged to kill civilians. Trial Judgment, paras 533-537, 549.

730 Trial Judgment, para. 549. *See, e.g.*, Trial Judgment, paras 649-663, 683, 712-713, 715, 739 (killings committed or ordered by commanders).

731 Trial Judgment, para. 646.

732 Trial Judgment, para. 646.

733 Trial Judgment, para. 651.

734 Trial Judgment, para. 646.

735 Trial Judgment, para. 647.

736 Trial Judgment, para. 646.

737 The Trial Chamber found that in mid-to-late February 1998, RUF/AFRC forces massacred 60-65 civilians in Kailahun Town in accordance with Bockarie's order. Many civilians had fled their villages before the 25 May 1997 coup, but then returned to their homes after having being encouraged by Bockarie to do so. However, after the Intervention, 60-65 unarmed male civilians who had fled and returned to the town were then arrested on Bockarie's orders on suspicion of being Kamajors or Kamajor collaborators, and interrogated by Augustine Gbao. Gbao's verdict condemning the civilians was based on mere suspicion or speculation, and was not the result of due process. The RUF/AFRC then executed these civilians at the roundabout and military police prison in Kailahun Town. The executions were clearly reprisal killings by Bockarie and RUF/AFRC forces acting under his orders against unarmed civilians perceived to be enemies of the RUF/AFRC. Several human heads and skulls were displayed on sticks on both sides of the road to Pendembu, and on the orders of Bockarie the corpses of the victims were not buried, leaving a stench in the air. The primary purpose of the massacre including the bizarre display of human heads and rotting corpses was to instil terror in the civilian population of Kailahun. Trial Judgment, paras 752-769.

738 Trial Judgment, para. 549.

739 Trial Judgment, para 663. The Trial Chamber also made similar findings regarding the RUF/AFRC strategy for the following killings: in Koidu Town between April and May 1998 (para. 672), in Bumpe between March and June (para. 684), in Tombodu in about March or April 1998 (para. 687), in Tombodu in about in about April 1998 (para. 692), in Koidu Buma in about May/June 1998 (para. 713), in Paema in about March/April 1998 (para. 730).

740 Trial Judgment, paras 534, 555. *See, e.g.*, Trial Judgment, paras 1991-2006, 2008-2017, 2019, 2021, 2023-2026, 2028-2031 (burnings in Kono District committed as acts of terror).

741 Trial Judgment, para. 646.

742 Trial Judgment, para. 768.

743 Trial Judgment, paras 663, 672, 684, 687, 692, 713, 730.

744 Trial Judgment, paras 650 (Koidu Town), 684 (Bumpe), 713 (Koidu Buma), 716 (Yengema).

745 Trial Judgment, paras 683, 684.

746 Trial Judgment, paras 712, 713.

747 Trial Judgment, para. 2044.

748 Trial Judgment, paras 52-55.

749 SAJ Musa was a senior AFRC commander and served as Acting Vice-Chairman of the Supreme Council in Sankoh's absence. Trial Judgment, para. 6750. After Johnny Paul Koroma appointed Sam Bockarie as Chief of Defence Staff, giving Bockarie overall authority over the combined and restructured RUF/AFRC forces, SAJ Musa disputed Bockarie's command and eventually led a breakaway group of predominantly AFRC troops to Koinadugu District. Trial Judgment, para. 54. On 23 December 1998, SAJ Musa died at Benguema outside Freetown. Trial Judgment, para. 57.

750 Gullit was a senior AFRC commander and member of the AFRC Supreme Council. Trial Judgment, para. 54.

751 Superman was a senior RUF commander and Battlefield Commander for Kono District. Evidence suggests that he was killed in 2001. Trial Judgment, paras 55, 154.

752 Trial Judgment, paras 52-55.

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753 Trial Judgment, para. 3107.

754 Trial Judgment, para. 3106.

755 Trial Judgment, paras 3109, 6958.

756 Trial Judgment, para. 3615.

757 Trial Judgment, para. 3112.

758 Trial Judgment, para. 540.

759 Trial Judgment, para. 56.

760 Trial Judgment, para. 3369.

761 Trial Judgment, para. 3371.

762 Trial Judgment, para. 57.

763 Trial Judgment, para. 3370.

764 Trial Judgment, para. 61.

765 Trial Judgment, paras 3394, 3464.

766 Trial Judgment, para. 3435.

767 Trial Judgment, para. 6792.

768 Trial Judgment, paras 3445-3449, 3611(xii). For example: Bockarie told Gullit that if ECOMOG forced them out of Freetown, they should burn the fucking place and that they should not spare anything. (Trial Judgment, para. 2062). Bockarie ordered Gullit to make Freetown more "fearful" than before. (Trial Judgment, para. 3445). Bockarie ordered over the radio that the Nigerian Embassy should be burnt. (Trial Judgment, para. 3447). Bockarie passed a direct instruction that if it was possible, if they had the chance, they should set the Kissy Terminal oil refinery on fire. (Trial Judgment, para. 2113). Bockarie ordered Gullit that before they withdrew, they should kill many people and burn down many houses. (Trial Judgment, para. 3448). When instructing Gullit to leave Freetown, Bockarie told him that he should make the area "fearful" until they reorganised themselves to regain Freetown. (Trial Judgment, para. 3445).

769 Trial Judgment, para. 3445.

770 Trial Judgment, para. 2067.

771 Trial Judgment, para. 3449.

772 Trial Judgment, para. 3452.

773 Trial Judgment, paras 3450-3452. For example: While in the hills around Kissy Mental Home, Gullit observed the civilians in Kissy dancing and welcoming the Guinean soldiers and ECOMOG forces, and taking this as a sign of betrayal, he then ordered a group to move towards Ferry Junction and to amputate and kill civilians and burn all the remaining houses. (Trial Judgment, para. 2108). Gullit ordered Bomb Blast to go to Calaba Town and burn down the area so that Freetown would be ungovernable. (Trial Judgment, para. 2155). Gullit declared Kingtom, Allen Town and Tower Hill a killing zone wherein anybody who came around that area was considered an enemy and that person should die. (Trial Judgment, paras 841, 2180). Gullit instructed rebels to go to Ferry Junction, Low Cost Area and Kissy and burn all the remaining houses and kill all the civilians. (Trial Judgment, para. 794). Gullit ordered other killings such the killing of over 60 civilians suspected of harbouring ECOMOG forces who had taken refuge in a mosque and the killing of four white nuns. (Trial Judgment, paras 806, 807). Gullit incited the rebel forces to burn all the houses and kill all the remaining civilians in Kissy. (Trial Judgment, para. 808). In Calaba Town commanders Gullit, Bazzy and Five-Five ordered atrocities such as the intentional massacre of hundreds of civilians by shooting, burning or hacking them to death. (Trial Judgment, para. 830). Gullit appointed one squad to move to the Low Cost Housing area, and to be sure to amputate people and burn houses in that area. (Trial Judgment, para. 1294).

774 Trial Judgment, para. 831.

775 Trial Judgment, para. 3450.

776 Trial Judgment, para. 788. *See* Trial Judgment, para. 2068 (burnings done for the primary purpose of spreading terror), 2172 (killings done for the purpose of spreading terror).

777 Trial Judgment para. 975. See also the Trial Chamber's further findings of the specific crime of rape and sexual violence proved in Freetown and the Western Area, in paras 977-980, 981-984, 985-989, 991-992, 993-999, 1001-1007, 1008-1015.

778 *See, e.g.*, Trial Judgment, paras 981-984 (the testimony of Alimamy Bobson Sesay), 991, 992 (the rape of girls by rebels led by Captain Blood), 1169 (a civilian was used as a sexual slave by Major Arif), 1187 (a civilian was kept as a sexual slave by Colonel B).

779 *See, e.g.*, Trial Judgment, paras 1155-1156, 1157-1163, 1165-1169, 1171-1179, 1181-1187.

780 Trial Judgment, para. 3451.

781 Trial Judgment, para. 61.

782 Trial Judgment, para. 61.

783 Trial Judgment, para. 3476.

784 Trial Judgment, para. 61.

785 See para. 542 for the Trial Chamber's general findings and para. 975 for the Trial Chamber's finding that rape was widespread throughout Freetown. The Trial Chamber found that killings, sexual violence, physical violence and burning were perpetrated as acts of terror (paras 2172-2191, 2068). The Trial Chamber further found the following specific crimes proved in the locations below (for child soldiers see *supra* para. 267, fn. 653, for enslavement see *supra* para. 261 fn. 613 and for sexual slavery see *supra* para. 264 fn. 630):
Freetown and Western Area in general: On 8 January a hospital in Freetown was overwhelmed with patients, 90% of whom were suffering war related injuries including mutilations and amputations of the hands, tongue and eyeballs (paras 1267-1273). On Waterloo St in January 1999 a civilian was abducted by rebels and beaten before being locked in a kitchen without food or water with other captives for four days (paras 1267-1273). Members of the RUF/AFRC burned civilian property with the primary purpose of spreading terror in the civilian population. Sam Bockarie told Gullit that if ECOMOG forced them put of Freetown "they should burn the fucking place and that they should not spare anything." Civilians suffered raping, hard labour, execution, amputation, burning of property (paras 2057-2068). RUF/AFRC members looted property from civilians (paras 1921-1926).
State House and surrounding area: At State House between 6 and 8 January 1999 rebel forces killed at least 35 Nigerian soldiers who were *hors de combat* and at least 55 civilians. The perpetrators were acting in accordance with the orders of Gullit to carry out indiscriminate killings, mass abductions, raping of civilians and burning and destruction of civilian and public property in Freetown as part of the campaign of terror waged against the civilian population (paras 781-788). In Freetown, including at State House and

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Pademba Rd, in January 1999 RUF/AFRC forces burned down houses and other property with the primary purpose of spreading terror amongst the civilian population. Sam Bockarie announced on the international media that he was giving orders to his commander Gullit to start burning strategic locations and capturing civilians in Freetown. He later confirmed such orders with Gullit "so that there would be no government and there will be nobody for the government to rule." As the rebels retreated they burned down houses (paras 2124-2139). RUF/AFRC members looted vehicles from civilians which they brought back to State House, as well as other civilian property including a car, items from the Vice President's office and clothing from a civilian (1928-1930). Over a period of three nights in January 1999 rebels under Gullit's command raped women and girls on the grounds of the State House in a public area (paras 977-980, 1016i). After the Junta captured the State House commanders captured young girls mostly aged between 14 to 16 and forced them to have sexual intercourse inside the State house. SBUs also captured girls aged about eight to nine to use for sex (paras 981-984, 1016ii, iii). In January 1999 a civilian was locked in a kitchen at State House in Freetown under armed guards with about 50 other civilians for about four days without food and water. He was then chained and forced to carry a heavy bomb to Calaba Town after not having eaten for four days (paras 1849-1864).

Kissy area: Near Ferry Junction on about 12 January two civilian men were killed in a ritualistic murder by the invading rebel forces. On Falcon St on about 15 January an old woman was killed as part of Operation No Living Thing. On about 18 January 8 civilians seeking refuge in a house were shot and killed after refusing to surrender their hands for amputation. On the same occasion rebels under the orders of "Commando" hacked to death five other civilian men who had similarly refused to surrender their hands for amputation. At Fataraman St on 18 January a rebel amputated and caused the death of a civilian. In January rebels led by Captain Blood killed a civilian who was set ablaze in his house. In January at the Good Shepherd Hospital RUF/AFRC forces under the command of Captain Blood executed 17 civilians. At Kissy Market and Low Cost Area in the third week of January rebels acting on the orders of commanders Gullit, Rambo Red Goat and Med Bajehjeh killed an unknown number of civilians they suspected of Supporting ECOMOG. On 22 January rebels under the command of Gullit, Five-Five, Rambo Red Goat and Med Bajehjeh killed over 60 civilians sheltering in Rogbalan mosque on suspicion that they were harbouring ECOMOG forces. At "Crazy Yard" on 22 January, after the massacre at Rogbalan mosque, a rebel acting on the orders of Gullit shot and killed four white nuns. The primary purpose of the murders in Kissy was to instil terror in the civilian population (paras 789-808). At Good Shepherd Hospital on about 6 January 1999 RUF/AFRC fighters came in and accused staff of treating ECOMOG and Kamajors and then forced 200 patients outside and beat them. 15 people were shot dead and at least another four were wounded. A Nigerian patient whose wound and amputated ear was being treated was shot dead (paras 1274-1277). At Kissy Market during January 1999 two RUF/AFRC child soldiers on patrol amputated a hand each from two shopkeepers taking refuge in their shop (paras 1278-1279). Near Kissy Mental Hospital RUF/AFRC rebels amputated and mutilated the hands of three civilians (paras 1280-1285). In Kissy a civilian was lashed with a cable by a rebel. The same civilian was struck by the butt of a gun, hit on the back with the flat side of a machete and had his hand amputated by Captain Blood. Captain Blood or persons under his command amputated both hands of a civilian. Many civilians had their hands cut off (paras 1286-1293). RUF/AFRC member Changa Bulanga performed three amputations in Kissy and an unknown number in the Low Cost Area (paras 1294-1297). In Kissy on 20 January 1999 two civilians had their hands amputated by members of the RUF/AFRC. One was told to "go and tell Tejan Kabbah, no more politics, no more votes" and the other to go tell Kabbah that he was "a messenger" (paras 1298-1302). On Rowe St in Kissy in January 1999 an RUF/AFRC member amputated a civilian's hand (paras 1303-1304). At the Samuels area of Kissy on 22 January 1999 RUF/AFRC commanders ordered three civilians' hands cut off and that the victims should "go to Kabbah and ask for Kabbah to give him a hand." RUF/AFRC members then amputated the hands of two civilians and the fingers of the other who was then shot and killed (paras 1305-1309). At Kissy on 19 January 1999 rebels under the command of "Rambo" asked civilians to queue for amputations. The first 13 civilians in the queue were killed and the 14th civilian's hands were amputated. An unknown number of civilians were in Connaught Hospital because their hands and/or arms had been amputated in Freetown (paras 1310-1315). In Kissy in late January 1999 RUF/AFRC members amputated the limbs of 11 civilians. On 10 to 22 January a 13 year old girl had her hand amputated (paras 1316-1325). In January 1999 during the Freetown Invasion rebels brought young girls of about 12 to 13 years old to a house on Blackhall Rd and raped them (paras 986-989, 1016iv). In Kissy on or about 22 January 1999 RUF/AFRC members under the command of Captain Blood raped young girls aged 13-15 years old. The rebels brought the girls, laid them outside in the open and raped them (paras 991-992, 1016v). In Kissy RUF/AFRC members pillaged civilian property from two stores in Kissy and the civilians inside the stores who resisted the looting had a hand each amputated (paras 1931-1933). In the area of Falcon St RUF/AFRC forces pillaged a sheep and chickens as well as 50,000 Leones from civilians (paras 1934-1937). In Kissy on or about 6 January 1999 RUF/AFRC members pillaged a watch and 200 dollars from a civilian. Civilians were arrested by the rebels and searched, the rebels taking all they had, including money. In January 1999 on Rowe St RUF/AFRC members pillaged items including televisions and radios from civilians' houses (paras 1938-1940). On Congress Rd in January 1999 RUF/AFRC members pillaged a civilian's money and food (paras 1941-1943). RUF/AFRC members entered Rogbalan Mosque and fired indiscriminately into it. After the shooting rebels reached into the pocket of a civilian who had fallen to the floor during the shooting and took 15,000 Leones (paras 1944-1946). Burnings were committed with the primary purpose of spreading terror among the civilian population. In Kissy rebels beat people, burned down houses and stole property. A hospital in Freetown received patients with burns caused by fleeing from torched homes. Members of the RUF/AFRC burned down property in Kissy and Fourah Bay. Civilians trapped inside houses died (paras 2090-2122).

Fourah Bay: At Ferry Junction in the second week of January three civilian government officials were killed on the orders of Gullit as punishment for being "collaborators" of the government. In the third week of January, rebels acting on the orders of commanders Gullit, Bazzy and Five-Five, killed an unknown number of civilians by burning them alive inside their homes, or forcing them outside their homes and killing them, in revenge for an RUF/AFRC fighter killed in

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the area. At Fourah Bay Rd on about 21 January 1999 retreating rebels killed three civilian children. The primary purpose of the murders in Fourah Bay was to instil terror in the civilian population (paras 809-814). On 21 January 1999 three sisters had their limbs amputated or mutilated. On 18 January 1999 RUF/AFRC members amputated the hands of seven civilians (paras 1327-1331).

Thunder Hill and Samuels Area: Three separate sets of RUF/AFRC rebels pillaged money and other possessions from a house at Thunder Hill in which civilians were staying. The civilians left and went to the Samuels Area where rebels pillaged their clothes and one civilian's money (paras 1949-1952).

Upgun: RUF/AFRC member Five-Five instructed RUF/AFRC members to amputate limbs and said he was "going to demonstrate it." He then performed a demonstration by amputating the arms of three civilians. Thereafter an unknown number of civilians had their arms amputated by RUF/AFRC members Major Mines and Kabila (paras 1332-1334).

Calaba Town: On about 18-22 January on the orders of commanders Gullit, Bazzy and Five-Five, fighters led by Bomb Blast, Rambo Red Goat, Med Bejehjeh and Alimamy Bobson Sesay massacred hundreds of civilians at Calaba Town by shooting, burning or hacking them to death, including a civilian nun shot dead by commander Tito, two civilians hacked to death with machetes, and a *hors de combat* ECOMOG soldier who was beheaded. The primary purpose of the murders in Calaba Town was to instil terror in the civilian population (paras 815-831). In January 1999 RUF/AFRC members burned down civilian houses with the primary purpose of spreading terror amongst the civilian population. Gullit ordered Bomb Blast to organise a team to go as far as Calaba Town to investigate the situation and "ensure that anywhere civilians were and houses were they should burn down the area and that they should ensure that Freetown becomes ungovernable." At Calaba Town the team killed civilians and burned down houses. If civilians attempted to run out they were shot and if they stayed inside they burned with the houses (paras 2153-2162). RUF/AFRC members forced captured civilians to carry bags filled with things rebels had taken from homes (paras 1953-1954). On 22 January nine civilians were abducted by RUF/AFRC members in Calaba Town and one of the civilians was told to carry a bag. The civilians moved with the rebels to Allen Town and were held there for three days with 100 other captured civilians guarded by armed SBUs to prevent them escaping (paras 1849-1864). Between 22 January and about March 1999 an RUF/AFRC member raped a civilian. The civilian was captured by a group of rebels in Calaba Town and taken to various places in Sierra Leone. She was handed over to a commander and told she should be his wife (paras 1008-1015, 1016viii). At Kola Tree in about the end of January 1999 RUF/AFRC members pillaged items of civilian property from a house as well as a civilian's wedding ring and an unspecified amount of money (paras 1947-1948).

Kingtom, Allen Town and Tower Hill areas: A group of rebels killed civilians as they moved from Wellington to Allen Town. In a church in Allen Town many "small girls" who were "not even adult" were killed by stabbing with bayonets for resisting rape. An old woman was shot and killed. In the second and third weeks of January 1999 on the orders of Gullit, rebels killed an unknown number of civilians suspected of collaborating with ECOMOG forces in Kingtom, Allen Town and Tower Hill. In Tower Hill a rebel commander named Junior Lion executed several civilians. On Guard St a rebel named "Captain Blood" beheaded seven young civilian men suspected of collaborating with ECOMOG. The primary purpose of the murders in Kingtom, Allen Town and Tower Hill was to instil terror in the civilian population (paras 832-841). In Kingtom in January 1999 RUF/AFRC members burned down property, including houses with people locked inside who died. The burnings were committed with the primary purpose of spreading terror among the civilian population (paras 2134-2139). In Allen Town and Waterloo between late January and early April 1999 a fighter named James raped a girl multiple times. The girl was abducted from her house in Wellington and taken to a church where she was raped and lost consciousness. The girl saw other young girls being raped, beaten and killed there. James took the girl to Waterloo and continued to rape her (paras 1001-1007, 1016vii).

Tumbo or Tombo: On 23 December 1998 RUF/AFRC fighters led by Captain Blood killed six civilians including a 10 year old boy during an attack on Tombo. The primary purpose of the murders was to instil terror in the civilian population (paras 842-844). Six houses were burnt down. Members of the RUF/AFRC burned civilian property to spread terror among the civilian population (paras 2084-2088). On the night of 23 December 1998 a member of the RUF/AFRC pillaged a civilian's personal property including a tape recorder, bag and money (paras 1955-1956).

Waterloo: Between late December 1998 and February 1999 rebels attacked Waterloo and an unknown number of civilian men, women and children were indiscriminately killed. Those killed included the Secretary General of the YWCA and a man and an old woman summarily executed in Lumpa Village by commander Peleto. The primary purpose of the murders in Waterloo was to instil terror in the civilian population (paras 845-854). In January 1999 rebels amputated the hands of an unknown number of men and women (paras 1349-1352). On about 22 December 1998 and in January 1999 RUF/AFRC forces burned civilian houses to spread terror among the civilian population. As a group of RUF/AFRC fighters went from Waterloo Junction to Freetown they burnt houses along the way. In Waterloo and Lumpa houses were burned and civilians killed (paras 2070-2082).

Wellington: Between late December 1998 and February 1999 rebels attacked Wellington and killed an unknown number of civilians, including a civilian who was shot simply because she was crying, a crippled teacher burnt to death in his house, and another man shot to death on the way to Calaba Town. In Loko Town in about mid-January 1999 rebels killed two civilians, one of them a six year old girl, by hacking them to death with machetes. The primary purpose of the murders in Wellington was to instil terror in the civilian population (paras 855-860). On 6 January 1999 a civilian's left hand was amputated and right hand mutilated by members of the RUF/AFRC. The civilian was told that she should go tell Kabbah that the rebels said they want peace. On the same day a separate group of rebels threw beer bottles at the civilian, kicked her into a gutter and kicked her in the thigh. On 6 January RUF/AFRC members under the command of Rocky amputated the hands of seven people. In late January the rebels amputated the arm of a three to four year old child and a civilian was badly beaten and left under a tree (paras 1335-1348). In January 1999 RUF/AFRC members burned down civilian houses and killed people, including a crippled teacher inside a burning house who died (paras 2145-2151). In January 1999 RUF/AFRC members

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pillaged food and money from civilians. On one occasion rebels beat some civilians and then forced one of them to show the rebels where she kept money. On another occasion a civilian whose husband had been killed and arm amputated was then captured by rebels who threw bottles at her, cut her and took money she had sewn into her underwear (paras 1957-1960). In Wellington, Calaba Town and Benguema between 22 January 1999 and 10 March 1999 Major Arif raped a civilian (paras 994-999, 1016vi).
Hastings: During an attack on Hastings on 3 January 1999 rebel forces killed three Nigerian ECOMOG soldiers who were hors de combat (paras 861-862).
Benguema: Between December 1998 and February 1999 rebels killed an unknown number of civilians including a woman who was buried alive with the body of SAJ Musa as a sacrifice, a young woman killed by a rebel called "Coal Boot" or "Gun Boot", and babies travelling with the fighters killed because they were "making noise." The primary purpose of the murders in Benguema was to instil terror in the civilian population (paras 863-868). In late December 1998 RUF/AFRC forces looted from shops in Benguema and Waterloo (paras 1961-1962).

786 *See, e.g.*, Trial Judgment, para. 2108.

787 *See, e.g.*, Trial Judgment, para. 2183.

788 *See, e.g.*, Trial Judgment, para. 2114.

789 *See, e.g.*, Trial Judgment, para. 2187.

790 *See, e.g.*, Trial Judgment, para. 2126.

791 Trial Judgment, para. 64.

792 Trial Judgment, para. 64.

793 Trial Judgment, para. 64.

794 Trial Judgment, para. 6280.

795 The RUF experienced factional infighting during this time, as divisions within the RUF leadership arose over political and military strategy. The RUF leadership was divided between those who wanted to continue the armed struggle and those in favour of a political solution to the conflict. In late March/early April 1999, Superman and Gibril Massaquoi fought with Sam Bockarie and Issa Sesay, with Superman's forces taking over Makeni. Around October 1999, fighting broke out again in Makeni between Superman, Issa Sesay and Brigadier Mani, with Issa Sesay taking over command of Makeni. Bockarie strongly opposed the disarmament of the RUF, and defied orders from Sankoh to disarm. The opposing camps engaged in violent clashes, ending in Bockarie resigning from the RUF and being summoned to Liberia by Taylor. Trial Judgment, paras 66, 6760, 6763, 6779, 6782. Following Bockarie's departure, a reconciliation meeting was convened, although there continued to be infighting. Trial Judgment, para. 6764.

796 Trial Judgment, para. 66.

797 Trial Judgment, para. 69. The two parties affirmed their commitment to the Lomé Peace Agreement of 7 July 1999, agreed to an immediate ceasefire and agreed to continue with the disarmament process.

798 Trial Judgment, para. 69.

799 Trial Judgment, para. 69.

800 Trial Judgment, para. 70.

801 Trial Judgment, para. 70.

802 Trial Judgment, para. 70.

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804 Trial Judgment, para. 557.

805 Trial Judgment, para. 542.

806 Trial Judgment, para. 543.

807 Trial Judgment, para. 543.

808 Trial Judgment, para. 544.

809 Trial Judgment, paras 521-523, 1800, 1803, 1805, 1807.

810 Trial Judgment, para. 1694.

811 Trial Judgment, paras 546, 1738, 1747.

812 Trial Judgment, para. 1738.

813 Trial Judgment, paras 673-675.

814 In Pendumbu in Kailahun District until July 2001. Trial Judgment, paras 1039-1043. In Buedu in Kailahun District from March 1998 to December 1999. Trial Judgment, para. 1066.

815 Trial Judgment, paras 1409, 1438, 1445, 1449, 1598, 1605.

816 Trial Judgment, para. 1495.

817 Trial Judgment, para. 1438.

818 Trial Judgment, paras 547-559.

819 Trial Judgment, paras 529, 534, 536, 539, 541, 542, 543, 544, 546, 548, 555, 556, 557.

820 Trial Judgment, paras 548 (during the Junta period, "the evidence demonstrated that there were large numbers of civilian victims."), 555 ("From February 1998 to December 1998, human rights abuses intensified, leaving thousands of civilians killed or mutilated by RUF and AFRC fighters. Hundreds of civilians were abducted, raped and the burning of houses and looting continued to occur."), 556 ("the evidence shows that thousands of civilians were killed during the attack on Freetown . . . and that thousands of others were abducted, burnt, beaten, mutilated and/or sexual abused"), 557 ("[a]ttacks continued to occur against the civilian population at all times relevant to the Indictment, affecting large numbers of civilians throughout the north and east of Sierra Leone").

821 *See supra* paras 46-252.

822 *See supra* paras 253-302.

823 The Trial Chamber considered evidence falling outside the temporal scope of the Indictment and made findings on that evidence only to: (i) clarify a given context; (ii) establish by inference the elements, in particular the *mens rea*, of criminal conduct occurring during the material period; and/or (iii) demonstrate a deliberate pattern of conduct. (*See* Trial Judgment, para. 101). Taylor was only convicted and sentenced for the crimes he planned or aided and abetted that were committed during the Indictment Period.

824 Trial Judgment, para. 2335. *See* generally Trial Judgment, paras 2261-2339 (Pre-Indictment Period: Camp Naama), 2563-2569 (Pre-Indictment Period: Summary of Findings and Conclusion). *See* also Trial Judgment, para. 2377.

825 While Taylor testified that "no human being on this planet that heard in these words that Sierra Leone would taste the bitterness of war[,] [i]t's a fabrication," the Trial Chamber found that the overwhelming evidence of both Prosecution and Defence witnesses established that Sierra Leoneans heard and remembered the broadcast and understood Taylor was threatening Sierra Leone. Trial Judgment, para. 2335,

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fn. 5082.

826 Trial Judgment, para. 6878. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused). During the invasion, Taylor's NPFL soldiers committed crimes against Sierra Leonean civilians including looting, abduction, rape and killing, while Sankoh's RUF soldiers captured diamonds from civilians and companies and Sankoh gave the diamonds to Taylor. Trial Judgment, paras 2383, 2445-2449. After the invasion, the Taylor's NPFL opened training camps in which they trained abducted civilians, including children. During two operations named Top 20 and Top 40, NPFL soldiers led attacks against Sierra Leonean civilians as well as junior RUF commandos. In around April/May 1992 Sankoh met Taylor in Gbarnga, Liberia and complained that Taylor's men were murdering and raping civilians and not respecting Sankoh as the leader. Trial Judgment, para. 2384. *See* also Trial Judgment, paras 2390, 2391, 2563(x). *See* generally Trial Judgment, paras 2374-2391 (Pre-Indictment Period: The Invasion of Sierra Leone), 2563-2569 (Pre-Indictment Period: Summary of Findings and Conclusion).

827 Trial Judgment, para. 6878. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused).

828 Trial Judgment, paras 2526, 2563(xvii). *See* generally Trial Judgment, paras 2494-2526 (Pre-Indictment Period: Sierra Rutile), 2563-2569 (Pre-Indictment Period: Summary of Findings and Conclusion). *See* also Trial Judgment, para. 6773. By 1994, following military and political defeats and faced with difficult conditions surviving in the jungles of Sierra Leone, Sankoh and his RUF officers decided to change their strategy, to capture the attention of the international community. Taylor advised Sankoh that the way to gain international attention was to attack a major place in Sierra Leone. Trial Judgment, paras 2520, 2524, 2526, 6790.

829 Trial Judgment, para. 2524.

830 Trial Judgment, para. 2520.

831 Trial Judgment, paras 2524, 2526, 2563(xvii).

832 Trial Judgment, para. 2526. Subsequently, Sankoh entered into negotiations with the ICRC and the hostages were released in Guinea. Following the attack on Sierra Rutile, Taylor further advised Sankoh to send an External Delegation to Côte d'Ivoire. Sankoh acted on Taylor's advice, and around December 1994 sent an RUF group called the External Delegation to Côte d'Ivoire in order to establish RUF political representation there. Trial Judgment, paras 2518, 6183, 6191.

833 Trial Judgment, para. 6879, fn. 15463. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused).

834 Trial Judgment, para. 2553.

835 Trial Judgment, para. 2554, 2561, 2563(xviii). *See* generally Trial Judgment, paras 2527-2561 (Pre-Indictment Period: Operation Stop Election (1996)), 2563-2569 (Pre-Indictment Period: Summary of Findings and Conclusion). In the Trial Chamber's view "this operation marked a clear change in the RUF's strategy. After Operation Stop Election, and during the remainder of the civil war in Sierra Leone, the RUF and later the AFRC/RUF continued to deliberately use terror against the Sierra Leonean population as a primary *modus operandi* of their political and military strategy." Trial Judgment, para. 6790. The Trial Chamber established that Sankoh's objective in launching "Operation Stop Election" in early 1996 was to "disrupt the elections by instilling terror in the civilian population and preventing them from voting, while at the same time raising concern of the Sierra Leone Government and international community about holding the said elections before the signing of the Abidjan Peace Agreement." Trial Judgment, para. 2554. *See* also *supra* para. 275.

836 Trial Judgment, para. 2560.

837 Trial Judgment, para. 2553.

838 Trial Judgment, para. 39.

839 Trial Judgment, para. 6790. *See* also *supra* paras 275-278, 299-300.

840 Trial Judgment, para. 6880. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused).

841 Trial Judgment, para. 6880, *citing* Exhibit P-297, Sierra Leone Humanitarian Situation Report 04-05 June 1997, UN Department of Humanitarian Affairs, paras 1, 2, 5, ERN 21395-21396.

842 Trial Judgment, para. 6818.

843 Trial Judgment, para. 6819.

844 Trial Judgment, para. 6821.

845 Trial Judgment, paras 6879, 6885, 6886. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused). Taylor was elected President of Liberia on 19 July 1997. Trial Judgment, para. 45.

846 Trial Judgment, para. 6879. Taylor was elected President of Liberia on 19 July 1997. Trial Judgment, para. 45. The Trial Chamber found that "when he had been inaugurated President of Liberia, [Taylor] was undoubtedly informed of the crimes committed by the RUF during the past years of the Sierra Leonean civil war and of the ongoing crimes committed by the Junta Government."

847 After his election, ECOWAS invited Taylor to join the ECOWAS Committee of Four for Sierra Leone, thereby transforming it into a Committee of Five. The ECOWAS Committee of Four had been composed of Nigeria, Guinea, Côte d'Ivoire and Ghana. Trial Judgment, paras 44, 45.

848 Trial Judgment, paras 6879, 6882.

849 Trial Judgment, para. 6950.

850 Trial Judgment, para. 6880, *citing* Exhibit D-136 , ECOWAS Final Report, Sixteenth Meeting of ECOWAS Chiefs of State, Abuja, Nigeria, dated 26-27 August 1997, DCT 76. A 26 August 1997 report by the ECOWAS Committee of Four described the "massive looting of property, murder and rapes" following the 25 May 1997 coup d'état. Trial Judgment, para. 6880, *citing* Exhibit D-135, ECOWAS Report of the Committee of Four on the Situation in Sierra Leone, dated 26 August 1997, DCT 32.

851 Trial Judgment, para. 6827, *citing* Exhibit D-140, ECOWAS, Communiqué, Fifth Meeting of the Ministers of Foreign Affairs of the Committee of Five on Sierra Leone, dated 10-11 October 1997.

852 Trial Judgment, para. 45.

853 Trial Judgment, para. 6881.

854 Trial Judgment, para. 6881, *citing* Exhibit P-069, UN Security Council Resolution 1132, dated 8 October 1997, p. 2. *See* also Trial Judgment, para. 6825. The Security Council expressed deep concern "at the continued violence and loss of life in Sierra Leone following the military coup of 25 May 1997, the deteriorating humanitarian conditions in that

country, and the consequences for neighbouring countries." Article 5 of the Resolution decided that "all States shall prevent the sale or supply to Sierra Leone, by their nationals or from their territories, or using their flag vessels or aircraft, or petroleum and petroleum products and arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, whether or not originating in their territory."

855 Trial Judgment, para. 6881.

856 Trial Judgment, para. 6898.

857 Trial Judgment, paras 6497, 6517, 6520, 6767(ii), 6776. *See* generally Trial Judgment, paras 6481-6520 (Leadership and Command Structure: Junta Period), 6767-6787 (Leadership and Command Structure: Summary of Findings and Conclusion).

858 Trial Judgment, para. 6520, 6767(ii).

859 Trial Judgment, paras 6768, 6775, 6945.

860 Trial Judgment, para. 6480, 6767(i). This was confirmation of a prior instruction in late 1996/early 1997, where prior to his departure for a political tour, Sankoh instructed Bockarie to take instructions from Taylor. Trial Judgment, para. 6480. *See* also Trial Judgment, para. 3834. During this period, the RUF/AFRC used the NPFL communications network to facilitate communications between Sankoh and Bockarie. Trial Judgment, para. 3804.

861 Trial Judgment, para. 6775. *See* generally 6767-6787 (Leadership and Command Structure: Summary of Findings and Conclusion).

862 Trial Judgment, para. 4792. *See* generally Trial Judgment, paras 4630-4733 (Arms and Ammunition: Closure of the Border/Arms Embargo), 4735-4802 (Arms and Ammunition: Shortage of Materiel in Liberia).

863 Trial Judgment, paras 4802, 5835(ii), 5836. *See* generally Trial Judgment, paras 4735-4802 (Arms and Ammunition: Shortage of Materiel in Liberia), 5835-5842 (Arms and Ammunition: Summary of Findings and Conclusion).

864 Trial Judgment, para. 4713.

865 Trial Judgment, paras 4734, 5835(i), 5836. *See* generally Trial Judgment, paras 4630-4733 (Arms and Ammunition: Closure of the Border/Arms Embargo), 5835-5842 (Arms and Ammunition: Summary of Findings and Conclusion).

866 *See* generally Trial Judgment, paras 2570-2753 (Role of Intermediaries).

867 From 1995 to 1997 Yeaten served as Deputy Director of the SSS of the Government of Liberia. After Taylor's election as President, Yeaten became Director of the SSS. He was promoted to Deputy Chairman of the Joint Chiefs of Staff in around 2000, putting him in charge of the generals of the Liberian armed forces for combat taking place in Liberia. Trial Judgment, para. 2571. Yeaten had a close relationship with Taylor, which bypassed the line of reporting to the Minister of State and emboldened Yeaten to take action without prior direction from Taylor. Trial Judgment, para. 2623. There was substantial evidence that Yeaten was representing, and was perceived to be representing, Taylor. Trial Judgment, para. 2626. The Defence submitted at trial that Yeaten was acting independently of Taylor in a "private enterprise", trading arms and ammunition for diamonds with the RUF/AFRC without Taylor's knowledge and approval. The Trial Chamber rejected this theory. *See* Trial Judgment, paras 2621-2629, 2710, 4953-4958. *See* generally Trial Judgment, paras 2571-2609 (Role of Intermediaries: Benjamin Yeaten). *See* also *supra* paras 169-172, 174-176.

868 Tamba was a member of the NPFL until about 1992, and then joined the RUF and remained with them until about 1994. Throughout the Indictment Period, Tamba worked for the SSS as a subordinate of Yeaten and Taylor and served as a courier of arms, diamonds and messages back and forth between the RUF/AFRC and Taylor. Evidence suggests that Tamba was killed. Trial Judgment, paras 154, 2702, 2718. *See* generally Trial Judgment, paras 2630-2718 (Role of Intermediaries: Daniel Tamba). *See* also *supra* paras 171, 172, 175, 176.

869 In the early 1990s Ibrahim Bah was a member of the NPFL. Trial Judgment, para. 2744. He was a trusted emissary who represented the RUF/AFRC at times and Taylor at times, and served as a liaison between them at times. He was a businessman who helped arrange arms and diamond transactions, and did not maintain an ongoing affiliation as a subordinate or agent with either the RUF/AFRC or Taylor. At times, however, he did represent the RUF/AFRC and Taylor in specific transactions or on specific missions. Trial Judgment, para. 2752. *See* generally Trial Judgment, paras 2719-2753 (Role of Intermediaries: Ibrahim Bah). *See* also *supra* paras 171, 172, 175, 176.

870 Marzah was a member of the SSS. Trial Judgment, para. 263. He testified as a witness.

871 The evidence indicated that Weah was a member of the SSS working under the direction of Yeaten. Trial Judgment, para. 4943, fn. 10951.

872 *See, e.g.*, Trial Judgment, paras 4958, 5163, 5873, 5948.

873 *See, e.g.*, Trial Judgment, para. 2951.

874 The evidence supported the finding of the UN Panel of Experts that diamond smuggling to Liberia was the bulk of the RUF/AFRC trade in diamonds and the primary source of income for the RUF/AFRC. Trial Judgment, para. 6143. *See* Trial Judgment, paras 5916, 5917 (summarising Exhibit P-018, "Report of the Panel of Experts Established by Resolution 1306-S/2000/1195, Adopted on 20 December 2000").

875 The Trial Chamber accepted the evidence that export of diamonds from Liberia was far greater than Liberian diamond production, due to diamonds from Sierra Leone being smuggled through Liberia. It also accepted the evidence that Liberian diamonds are generally known to be of a significantly lesser quality than diamonds from Sierra Leone. The Trial Chamber found that this evidence refuted Taylor's contention that he would have had no reason to trade diamonds with the RUF/AFRC because Liberia had its own diamonds. Trial Judgment, paras 6054, 6146. *See* Trial Judgment, paras 6030-6035 (summarising Exhibit P-019, "Diamonds, the RUF and the Liberian Connection-a Report for the Office of the Prosecutor, the Special Court for Sierra Leone, Ian Smillie, 21 April 2007").

876 Trial Judgment, paras 5874, 6139(i), 6141. *See* generally Trial Judgment, paras 5846-5874 (Diamonds: Junta Period), 6139-6149 (Diamonds: Summary of Findings and Conclusion). The Trial Chamber found that mining by ECOMOG or other forces at times during this period did not raise doubt that Taylor received RUF /AFRC diamonds mined in Kono and Tongo Fields during the Junta Period. Trial Judgment, para. 5872.

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877 Trial Judgment, para. 641. *See* also paras 261-263, 278.

878 Trial Judgment, para. 5864.

879 In February/March 1998, RUF/AFRC forces "deliberately targeted civilians in Koidu Town in order to prevent them from staying in or returning to Koidu Town and in order to maintain the diamond-rich Kono District as a strong Junta base from which the AFRC/RUF fighters would finance and mount further attacks upon their enemies including ECOMOG and the CDF or Kamajors." From at least January 1998 through the remainder of the Indictment Period, members of the RUF/AFRC forces engaged in widespread and large scale abductions of civilians in Kono District and used them as forced labour to work in diamond mines as well as to carry loads, perform domestic chores, go on food-finding missions and undergo military training. Trial Judgment, paras 663, 1726, 1753.

880 Trial Judgment, paras 5921-5930.

881 Trial Judgment, paras 5937, 5938. Eddie Kanneh was a senior AFRC commander and served as Secretary of State East during the Junta Period, stationed in Kenema with Bockarie. Trial Judgment, para. 585.

882 Trial Judgment, para. 5939.

883 Trial Judgment, paras 5948, 6139(ii), 6142. *See* generally Trial Judgment, paras 5875-5948 (Diamonds: February 1998–July 1999), 6139-6149 (Diamonds: Summary of Findings and Conclusion). The Trial Chamber found that while the evidence did not establish that every delivery of diamonds to Taylor was matched by a delivery of arms and ammunition to the RUF/AFRC, it did clearly establish that the diamonds were given to Taylor to get materiel from him. Trial Judgment, para. 5936.

884 Trial Judgment, para. 5944, 6143. *See* Trial Judgment, paras 5920-5947. The Trial Chamber accepted evidence that the trade of diamonds between Liberia and Sierra Leone could not be conducted in Liberia without the permission and the involvement of Liberian Government officials at the highest level. The Trial Chamber found that the facts that the RUF/AFRC transacted diamonds with other entities and that diamond smuggling occurred before Taylor became the President of Liberia did not raise doubt that Taylor was involved in the smuggling with the RUF/AFRC. Trial Judgment, paras 5942-5944, 6143.

885 Trial Judgment, paras 5811, 5835(xxxviii). *See* generally Trial Judgment, paras 5754-5834 (Arms and Ammunition: Other Sources of Materiel).

886 Trial Judgment, para. 5812.

887 Trial Judgment, paras 5390-5394, 5406, 5408, 5812, 5835(xxii), 5840, 6910. *See* generally Trial Judgment, paras 5349-5409 (Arms and Ammunition: Allegations that the Accused Facilitated Supplies: Magburaka Shipment). In Freetown, Bah met with Sam Bockarie and Johnny Paul Koroma. When Bockarie expressed concern about attacks by ECOMOG forces and the RUF/AFRC's lack of ammunition, Bah told Bockarie that he had been sent by Taylor to assist the RUF/AFRC to get arms and ammunition. Bah also told senior AFRC officials who expressed their need for ammunition that he would be able to help them. Trial Judgment, paras 5390, 5394. The Magburaka Shipment was one of the three main sources of arms and ammunition for the RUF/AFRC during the Indictment Period.

888 Trial Judgment, paras 5386-5388.

889 Trial Judgment, paras 5395, 5396, 5406, 5408, 5835(xxiv).

890 Trial Judgment, paras 5400-5404, 5408, 5835(xxiv).

891 Trial Judgment, paras 5397-5399, 5409, 5835(xxv).

892 Trial Judgment, para. 5397.

893 Trial Judgment, para. 5397.

894 Trial Judgment, paras 5546-5552, 5559, 5835(xxvii), 5840, 6911. *See* generally Trial Judgment, paras 5531-5560 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: The AFRC Coup in May 1997 to the Retreat from Freetown in February 1998).

895 Trial Judgment, paras 4845, 5835(iii), 5837, 6910. *See* generally Trial Judgment, paras 4803-4854 (Arms and Ammunition: Allegations of Direct Supply by the Accused: Alleged Ammunition Supply from Daniel Tamba).

896 Trial Judgment, paras 3915, 4248(xvi), 4256, 6934, 6936. *See* generally Trial Judgment, paras 3915-3918 (Operational Support: Logistical Support).

897 Trial Judgment, paras 5553-5558, 5560, 5835(xxviii), 6911. *See* generally Trial Judgment, paras 5531-5560 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: The AFRC Coup in May 1997 to the Retreat from Freetown in February 1998). From their base in Kenema Town, "RUF and AFRC forces committed crimes in various locations in the Kenema District, including but not limited to a number of unlawful killings in Kenema Town and Tongo Fields, the enslavement of an unspecified number of civilians in the mining operations at Tongo Fields, and use of children to actively participate in hostilities at Tongo Fields." Trial Judgment, para. 5557.

898 Trial Judgment, paras 4840-4842.

899 Trial Judgment, paras 5819, 5823, 5828-5833, 5835(xxxviii)(xxxix), 5842, 6913. *See* generally Trial Judgment, paras 5754-5834 (Arms and Ammunition: Other Sources of Materiel).

900 Trial Judgment, para. 5812.

901 Trial Judgment, para. 5814.

902 Trial Judgment, paras 5814, 5819. The Trial Chamber also noted that the quality of the materiel obtained from ULIMO was questionable. Trial Judgment, para. 5821.

903 Trial Judgment, para. 5820.

904 Trial Judgment, para. 5822.

905 *See supra* paras 279-284.

906 Trial Judgment, para. 555.

907 Trial Judgment, para. 6883 and accompanying footnotes with extensive citations therein. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused).

908 Trial Judgment, para. 6883 and accompanying notes with extensive citations therein.

909 Trial Judgment, paras 6834, 6838, 6842-6844. The First Progress Report of UNOMSIL highlighted evidence of the "systematic and widespread perpetration of multiple forms of human rights abuse against the civilian population, including rape." Women and children were reported to be held captive and used as porters, human shields and for forced sexual activity. The rebels' "campaign of terror and their military activities have resulted in the displacement of at least 350,000 people since February [1998]." The Second Progress Report explained that, following the arrest of

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Sankoh, the RUF "announced on 17 August 1998 a terror campaign against civilians, CDF and the Economic Community of West African States Monitoring Group (ECOMOG)" if the Government failed to release Sankoh. The Third Progress Report explained that: "Attacks and forms of abuse of civilians exhibited a characteristic *modus operandi:* amputation of limbs, mutilation, actual or attempted decapitation, rape, burning alive of men, women and children, destruction of homes, abduction and looting."

910 Trial Judgment, paras 6828, 6829.

911 Trial Judgment, para. 6840 (emphasis in original). Amnesty International also raised attention regarding the situation of children, highlighting that "[c]hildren have been particular victims of the violence and brutality in Sierra Leone. As well as being deliberately and arbitrarily killed, mutilated and maimed, thousands of children have been and continue to be abducted by AFRC and RUF forces and forced to fight. Girls and women have been systematically raped and forced into sexual slavery." Trial Judgment, para. 6841.

912 Trial Judgment, para. 6837. The Security Council adopted a number of measures aimed at prohibiting the sale and supply of arms and related materiel to non-governmental forces in Sierra Leone. The Security Council further decided that "all States shall prevent the entry into or transit through their territories of leading members of the former military junta and of the Revolutionary United Front (RUF). . . .", Exhibit P-070, UN SC Res. 1171 (1998).

913 Trial Judgment, para. 6884. This joint condemnation was reiterated at a subsequent meeting of the two Presidents held in Monrovia on 20 July 1998. Trial Judgment, para. 6846. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused).

914 Trial Judgment, para. 6884 (emphasis added), fn. 15843. *See* also Trial Judgment, para. 6805, *quoting* Transcript, Charles Ghankay Taylor, 25 November 2009, p. 32395.

915 Trial Judgment, para. 6884, fn. 15844. *See* also Trial Judgment, para. 6805.

916 Trial Judgment, para. 6806.

917 Trial Judgment, para. 6806.

918 Trial Judgment, para. 1459. *See* generally Trial Judgment, paras 6139-6149 (Diamonds: Summary of Findings and Conclusion)

919 Trial Judgment, paras 3613-3615, 6942. *See* generally Trial Judgment, paras 3611-3618 (Military Operations: Summary of Findings and Conclusion). *See* also Trial Judgment, para. 6778 ("[T]he Trial Chamber notes that the advice and instruction of [Taylor] to the AFRC/RUF mainly focused on directing their attention to the diamondiferous area of Kono in order to ensure the continuation of trade, diamonds in exchange for arms and ammunition.").

920 Trial Judgment, paras 2769, 3611(i), 3613. *See* generally Trial Judgment, paras 2754-2769 (Military Operations: Alleged Message from Base 1 to Troops Retreating from Kono).

921 Trial Judgment, paras 2863, 3611(ii), 3613, 6942. *See* generally Trial Judgment, paras 2770-2864 (Military Operations: Operations in Kono (Early 1998)).

922 Trial Judgment, para. 52.

923 Trial Judgment, para. 53.

924 Trial Judgment, paras 3856, 4248(xi), 6543.

925 Trial Judgment, paras 2864, 3611(iii), 3613, 6942. *See* generally Trial Judgment, paras 2770-2864 (Military Operations: Operations in Kono (Early 1998)).

926 Trial Judgment, para. 54. *See* also Trial Judgment, para. 2927.

927 Trial Judgment, paras 2951, 3611(v), 3614, 6942. *See* generally Trial Judgment, paras 2865-2951 (Military Operations: Operation Fitti-Fatta).

928 Trial Judgment, paras 5632, 5835(xxx). *See* generally Trial Judgment, paras 5594-5632 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Operation Fitti-Fatta).

929 Trial Judgment, paras 4094, 4248(xxxii), 4258. Several witnesses testified that the RUF/AFRC used such individuals throughout the conflict on the basis that the fighters believed in their powers. Trial Judgment, para. 4090. The provision of the herbalists and the rites they performed bolstered some fighters' confidence, as intended. Trial Judgment, para. 4092. *See* generally Trial Judgment, paras 4069-4094 (Operational Support: Provision of Herbalists), 4248-4262 (Operational Support: Summary of Findings and Conclusion).

930 Trial Judgment, paras 5829-5831, 5834, 5835(xl), 5842, 6914. *See* generally Trial Judgment, paras 5561-5721 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: February 1998 to the Freetown Invasion in January 1999), 5754-5834 (Arms and Ammunition: Other Sources of Materiel), 5835-5842 (Arms and Ammunition: Summary of Findings and Conclusion).

931 Trial Judgment, paras 5550-5552, 5559, 5829, 5835(xxvii), 5840, 6911. *See* generally Trial Judgment, paras 5531-5560 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: The AFRC Coup in May 1997 to the Retreat from Freetown in February 1998).

932 Trial Judgment, paras 5591-5593, 5829, 5835(xxix), 6911. *See* generally Trial Judgment, paras 5561-5593 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Operations in Kono in early 1998).

933 Trial Judgment, paras 5629, 5632, 5835(xxx). *See* generally Trial Judgment, paras 5594-5632 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Fitti-Fatta in mid-1998).

934 Trial Judgment, paras 5657, 5659, 5667, 5829, 5835(xxxii), 6911. *See* generally Trial Judgment, paras 5633-5667 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Operations in the North).

935 Trial Judgment, paras 5664-5666, 5829, 5835(xxxi), 6911. *See* generally Trial Judgment, paras 5633-5667 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Operations in the North).

936 Trial Judgment, paras 5829-5831, 5834, 5835 (xl), 5842, 6914.

937 Trial Judgment, paras 4943, 5829, 6914.

938 Trial Judgment, para. 5030, 5835(vi), 5837, 6910. *See* generally Trial Judgment, paras 4966-5031 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Sam Bockarie's Leadership: Alleged Trips by Bockarie to Liberia in 1998).

939 Trial Judgment, paras 4965, 5835(v), 5837, 6910. *See* generally Trial Judgment, paras 4855-4965 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Sam Bockarie's Leadership: Alleged Deliveries of

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Materiel from Taylor to Sierra Leone).

940 Trial Judgment, paras 5329, 5819, 5835(xix), 5839. *See* generally Trial Judgment, paras 5294-5330 (Arms and Ammunition: Allegations that the Accused Facilitated Supplies: Supplies from ULIMO: Alleged Facilitation through Varmuyan Sherif).

941 Trial Judgment, paras 5330, 5819, 5835(xx). As a result, members of ULIMO who were supposed to disarm and surrender their arms to the UN instead sold or bartered them to the RUF/AFRC. Trial Judgment, para. 5329.

942 Trial Judgment, paras 5948, 6139(ii), 6142. *See* generally Trial Judgment, paras 5875-5948 (Diamonds: February 1998–July 1999), 6139-6149 (Diamonds: Summary of Findings and Conclusion).

943 Trial Judgment, paras 3915-3918, 4248(xvi), 4256, 4262, 6934, 6936. *See* generally Trial Judgment, paras 4248-4262 (Operational Support: Summary of Findings and Conclusion).

944 Trial Judgment, paras 3915-3918, 4248(xvi), 4256, 4262, 6934, 6936.

945 Trial Judgment, paras 3848, 4248(x), 4254, 6929, 6936. *See* generally Trial Judgment, paras 3843-3848 (Operational Support: Use of Liberian Communications by the RUF: Communications relating to Eddie Kanneh in Liberia in 1998), 4248-4262 (Operational Support: Summary of Findings and Conclusion).

946 Trial Judgment, paras 4149, 4150, 4152, 4248(xxxvi), 4259, 6943. *See* further Trial Judgment, paras 4127-4152 (Operational Support: Order to Build an Airfield in Buedu), 4248-4262 (Operational Support: Summary of Findings and Conclusion).

947 Trial Judgment, paras 5823-5826, 5828-5833, 5835 (xxxviii)(xxxix), 5842, 6913. *See* generally Trial Judgment, paras 5754-5834 (Arms and Ammunition: Other Sources of Materiel), 5835-5842 (Arms and Ammunition: Summary of Findings and Conclusion).

948 Trial Judgment, para. 5551. *See* generally Trial Judgment, paras 5531-5560 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: The AFRC Coup in May 1997 to the Retreat from Freetown in February 1998). Witness Issa Sesay also testified that "the only arms and ammunition that came to Sierra Leone during the Junta regime was the flight that landed in Magburaka . . . [which] was also the only stock of ammunition Issa Sesay was aware of that the RUF would have had access to." Trial Judgment, para. 5541.

949 Trial Judgment, paras 5813-5823. Arms purchases from ULIMO were a minor enterprise, and by June 1998, during a period of heightened military action for the RUF/AFRC, the small amounts of arms brought from ULIMO were not sufficient to fight off Guinean and ECOMOG attacks. Materiel obtained by trade with the Guineans was minor. Trial Judgment, para. 5819. Materiel purchased or traded from AFL and ECOMOG commanders was also minor, and there was little indication that the RUF/AFRC had continuing arrangements with ECOMOG for arms and ammunition. Trial Judgment, para. 5822.

950 Trial Judgment, paras 5329, 5819, 5835(xix), 5839. *See* generally Trial Judgment, paras 5294-5330 (Arms and Ammunition: Allegations that the Accused Facilitated Supplies: Supplies from ULIMO: Alleged Facilitation through Varmuyan Sherif)

951 Trial Judgment, para. 5825.

952 Trial Judgment, para. 5830, 5834, 6914. In general, through 1998 there was little evidence that the RUF/AFRC was able to capture much by way of arms and ammunition. Trial Judgment, para. 5826. *See* generally Trial Judgment, paras 5824-5834 (Arms and Ammunition: Other Sources of Materiel: Captured Materiel).

953 Trial Judgment, para. 6543.

954 Trial Judgment paras 4105, 4109, 4248(xxxiii), 4259, 6943. *See* generally Trial Judgment, paras 4095-4109 (Operational Support: Bunumbu Training Camp).

955 *See, e.g.*, Trial Judgment, paras 1368-1378, 1473-1482, 1782-1789.

956 Trial Judgment, paras 1377-1379.

957 Trial Judgment, paras 4579, 4618(vi), 4621. *See* generally Trial Judgment, paras 4496-4583 (Military Personnel: Repatriation of Sierra Leoneans), 4618-4623 (Provision of Military Personnel: Summary of Findings and Conclusion).

958 Trial Judgment, paras 4252-4255, 4248, 4262, 6928-6931, 6936. *See* generally Trial Judgment, paras 3622-3914 (Operational Support: Communications), 4248-4262 (Operational Support: Summary of Findings and Conclusion).

959 Trial Judgment, paras 3730, 4248(iv), 4252, 4262, 6928. *See* generally Trial Judgment, paras 3667-3731 (Operational Support: Communications: Satellite Phones).

960 Trial Judgment, paras 4254, 4262, 6929, 6936. *See* generally Trial Judgment, paras 3806-3914 (Operational Support: Communications: Use of Liberian Communications by the RUF).

961 Trial Judgment, paras 3856, 4248(xi), 4254, 6929, 6936. During this period the RUF/AFRC forces were engaged in heavy fighting with ECOMOG and CDF forces, and crimes were committed during these attacks. Trial Judgment, para. 5551. *See* generally Trial Judgment, paras 3849-3856 (Operational Support: Communications: Use of Liberian Communication by the RUF: Communications between Dauda Aruna Fornie and Sierra Leone in 1998).

962 Trial Judgment, paras 3914, 4248(xv), 4255, 4262, 6930, 6936. *See* also Trial Judgment, paras 3889, 3890, 3892, 3894, 3896 ("448 warnings" issued in 1998). *See* generally Trial Judgment, paras 3887-3914 (Operational Support: Communications: Use of Liberian Communication by the RUF: "448" Warnings).

963 Trial Judgment, para. 3889.

964 Trial Judgment, paras 5514, 6959. *See* generally Trial Judgment, paras 5410-5527 (Arms and Ammunition: Allegations that the Accused Facilitated Supplies: Burkina Faso Shipment).

965 Trial Judgment, para. 3109.

966 Trial Judgment, paras 3117, 3129, 3611(vi), 3615, 5514, 6958, 6961. *See* generally Trial Judgment, paras 2952-3130 (Military Operations: The Freetown Invasion: The Plan), 3611-3618 (Military Operations: Summary of Findings and Conclusion).

967 Trial Judgment, para. 3130, 3611(vii), 3615, 6958, 6959.

968 Trial Judgment, para. 3112, 3129, 3611(vi), 3615, 6958, 6959.

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969 Trial Judgment, paras 5525, 5527, 5835(xxvi), 5841, 6910. *See* generally Trial Judgment, paras 5410-5527 (Arms and Ammunition: Allegations that the Accused Facilitated Supplies: Burkina Faso Shipment).

970 Trial Judgment, para. 5524, 5481.

971 Trial Judgment, paras 3112, 3611(vii), 3615 (briefed on the meeting). *See* also Trial Judgment, para. 3722 (provision of the satellite phone).

972 Trial Judgment, paras 3117, 3130, 3611(vii), 3615, 6958, 6959.

973 Trial Judgment, para. 3130, 3611(vii), 3615.

974 Trial Judgment, paras 4365, 4394-4396, 4618(i)(iii), 4619 6918, 6923. *See* generally Trial Judgment, paras 4266-4396 (Provision of Military Personnel: Red Lion Battalion), 4618-4623 (Provision of Military Personnel: Summary of Findings and Conclusion).

975 Trial Judgment, paras 4581, 4618(viii), 4621, 6920. *See* generally Trial Judgment, paras 4496-4583 (Military Personnel: Repatriation of Sierra Leoneans).

976 Abu Keita was a former deputy chief of staff and general of ULIMO-K. He was then sent by Taylor to the RUF/AFRC in 1998, where he remained until 2002. He possessed high-level military expertise and was sent by Taylor to Sierra Leone to command the Scorpion Unit. Trial Judgment, paras 213, 4491, 6922.

977 Trial Judgment, paras 4491, 4492, 4618(iv), 4620, 6919. *See* generally Trial Judgment, paras 4397-4495 (Military Personnel: Scorpion Unit).

978 Trial Judgment, paras 4480, 4493, 4618(v), 4620, 6919.

979 The Burkina Faso Shipment was distributed to RUF/AFRC commanders to attack Kono, Kenema, Makeni and Tongo. Trial Judgment, paras 5702, 5719.

980 Trial Judgment, paras 56, 3369. *See* also *supra* paras 285-292. *See* generally Trial Judgment, paras 3131-3486 (Military Operations: The Freetown Invasion: Implementation of the Plan). The second prong of the RUF/AFRC attack in accordance with the Bockarie/Taylor Plan, the attack on the Segbwema-Daru axis towards Kenema, was unsuccessful. Trial Judgment, para. 3369.

981 Trial Judgment, paras 5824, 5830, 5835(xxxiii), 6914. *See* further Trial Judgment, paras 5754-5834 (Arms and Ammunition: Other Sources of Materiel), 5835-5842 (Arms and Ammunition: Summary of Findings and Conclusion). The Magburaka Shipment, the Burkina Faso Shipment and this captured materiel from ECOMOG were the three main sources of arms and ammunition for the RUF/AFRC during the Indictment Period. Trial Judgment, para. 5809.

982 Trial Judgment, para. 3369.

983 Trial Judgment, para. 3371.

984 Trial Judgment, paras 57, 3370.

985 Trial Judgment, paras 57, 3370.

986 Trial Judgment, para. 3394, 3481, 3611(viii), 3617, 6965. *See* generally Trial Judgment, paras 3379-3393 (Relationship between Bockarie and Gullit prior to the death of SAJ Musa), 3394-3401 (Resumption of communications after the death of SAJ Musa). The Defence conceded that Gullit resumed contact with Bockarie after SAJ Musa's death. Trial Judgment, para. 3394. While Gullit was with SAJ Musa, he maintained contact with Bockarie and would update Bockarie and Bockarie's commanders on operational matters. Trial Judgment, paras 3385, 3386, 6755. The Trial Chamber was "satisfied that nothing suggests that the relationship between Bockarie and Gullit had broken down so irretrievably that it prevented Bockarie and Gullit from working together after the death of SAJ Musa. Trial Judgment, para. 3393.

987 Trial Judgment, para. 3478. The Trial Chamber considered that Taylor's planning liability for the crimes committed in Freetown depended on whether, following SAJ Musa's death and Gullit's assumption of command, Bockarie was effectively in command of a concerted and coordinated effort to capture Freetown, with Gullit as his subordinate. It concluded that this was the case. Trial Judgment, para. 3479. *See* also Trial Judgment, paras 3481-3486, 3617. This issue is addressed in Section VIII of the Appeal Judgment in relation to the Trial Chamber's conclusion that the *actus reus* of planning liability was proved beyond a reasonable doubt. *See infra* paras 550-561.

988 Trial Judgment, paras 3435, 3482, 3486, 3611(ix)(xii)(xiii), 3617, 6965. *See* generally Trial Judgment, paras 3419-3435 (Attempts at coordination and the entry into Freetown of Rambo Red Goat). While Gullit proceeded into Freetown before Bockarie's reinforcements arrived, the Trial Chamber was satisfied that Gullit did so due to military exigencies and because the reinforcements were unduly delayed, and noted the evidence that Gullit proceeded into Freetown only once he knew that Issa Sesay's forces were on their way from Makeni and were in a position to block ECOMOG reinforcements to Freetown. Trial Judgment, paras 3409, 3410, 3413, 3414. *See* generally Trial Judgment, paras 3402-3418 (Gullit's failure to heed Bockarie's instruction to wait for reinforcements).

989 Trial Judgment, paras 3428-3433, 3435. *See* generally Trial Judgment, paras 3419-3435 (Attempts at coordination and the entry into Freetown of Rambo Red Goat).

990 Trial Judgment, paras 3483, 3611(x), 6962. *See* generally Trial Judgment, paras 3419-3435 (Attempts at coordination and the entry into Freetown of Rambo Red Goat). *See supra* paras 191-196.

991 Trial Judgment, paras 3401, 3481, 3611(viii), 3617, 6965. *See* generally Trial Judgment, paras 3394-3401 (Resumption of communications after the death of SAJ Musa), 3419-3435 (Attempts at coordination and the entry into Freetown of Rambo Red Goat), 3436-3464 (Whether fighters in Freetown took orders from Bockarie). The Trial Chamber noted that the "bulk of the supporting evidence was adduced from radio operators and fighters stationed with Gullit, Bockarie and commanders under Bockarie's authority whose role it was to monitor the relevant communications." Trial Judgment, para. 3400.

992 Trial Judgment, paras 3464, 3485, 3611(xii), 3617, 6965. *See* Trial Judgment, paras 3445-3452 (instruction to use terror tactics against the civilian population on the retreat from Freetown), 3453-3457 (instruction to send high-profile political detainees released from Pademba Road Prison to RUF-controlled territory), 3458-3463 (instructions to execute Martin Moinama and a group of captured ECOMOG soldiers near the State House).

993 Trial Judgment, paras 3464, 3485, 3611(xii), 3617, 6965. *See* Trial Judgment, paras 3452 ("The Trial Chamber is satisfied, on the strength of the Prosecution evidence, that Bockarie did direct Gullit to use terror tactics against the civilian

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population on the retreat from Freetown, and that Gullit complied."), 3457 ("The Trial Chamber is satisfied . . . that Bockarie did direct Gullit to send high-profile political detainees released from Pademba Road Prison to RUF-controlled territory and Gullit complied with that instruction."), 3463 ("The Trial Chamber is satisfied, on the Prosecution evidence, that Bockarie gave Gullit orders to execute Martin Moinama, and a group of captured ECOMOG soldiers near the State House, and both of which orders were carried out by Gullit.").

994 Trial Judgment, para. 61.

995 Trial Judgment, paras 3394, 3464.

996 Trial Judgment, para. 61.

997 Trial Judgment, paras 3445-3452, 3485, 3611(xii), 3617, 6965. *See* also *supra* paras 285-292.

998 Trial Judgment, para. 3471, 3484, 3611(xi). *See* generally Trial Judgment, paras 3465-3471 (Whether Bockarie assisted the retreat of Gullit's forces from Freetown).

999 Trial Judgment, para. 3477, 3484, 3611(xi). *See* generally Trial Judgment, paras 3472-3477 (Joint RUF/AFRC attempts to re-enter Freetown).

1000 Trial Judgment, paras 3564, 3606, 3611(xiv), 3729, 4248(iii), 4252, 6928, 6966. *See* generally Trial Judgment, paras paras 3554-3578 (Contact between Bockarie and the Accused, or the Accused's subordinates), 3581-3601 (Specific directions from the Accused), 3667-3731 (Operational Support: Communications: Satellite Phones).

1001 Trial Judgment, para. 6928.

1002 Trial Judgment, paras 3564, 3606, 3611(xiv), 3618, 6966. *See* generally Trial Judgment, paras 3554-3564 (Radio or Satellite phone contact between Bockarie and Yeaten, Bockarie and the Accused during the Operation).

1003 Trial Judgment, paras 3564, 3606, 3611(xiv), 3618, 6966.

1004 Trial Judgment, paras 3591, 3609, 3611(xvii), 3618. *See* generally Trial Judgment, paras 3586-3591 (Specific directions from the Accused: To send prisoners released from Pademba Road Prison to RUF controlled areas).

1005 Trial Judgment, paras 3572, 3606, 3611(xiv), 3618, 6966. *See* generally Trial Judgment, paras 3568-3572 (Visits by Benjamin Yeaten to Buedu in December 1998 and January 1999).

1006 Trial Judgment, para. 3596, 3606, 3611 (xiv), 3618. *See* generally Trial Judgment, paras 3592-3596 (Specific directions from the Accused: In relation to military strategy/sending reinforcements).

1007 Trial Judgment, para. 3899, 3914, 4248(xv), 4255, 4262, 6930, 6936. *See* generally Trial Judgment, paras 3887-3914 (Operational Support: Communications: Use of Liberian Communication by the RUF: "448" Warnings).

1008 Trial Judgment, para. 3897.

1009 Trial Judgment, paras 5130, 5835(xi), 6910. *See* generally Trial Judgment, paras 5111-5130 (Arms and Ammunition: During Sam Bockarie's Leadership: Alleged Shipment from Niger on 22 December 1998 brought back by Dauda Aruna Fornie). While in Freetown, Gullit requested additional ammunition from Bockarie, who then sent a request to Benjamin Yeaten. Fornie then went on Bockarie's behalf to White Flower, where he obtained ammunition, RPGs and grenades. After Fornie's return to Buedu, the ammunition was then sent to RUF/AFRC forces in Waterloo via Issa Sesay in Makeni. Trial Judgment, paras 5113, 5114, 5123-5129.

1010 Trial Judgment, para. 5702, 5705, 5708, 5711, 5713-5716, 5719-5721, 5835(xxxiii)(xxxiv)(xxxv), 5481. *See* generally Trial Judgment, para. 5668-5721 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: The December 1998 Offensives and the Freetown Invasion). The Burkina Faso Shipment was distributed to RUF/AFRC commanders to attack Kono, Kenema, Makeni and Tongo in accordance with the Bockarie/Taylor Plan. Trial Judgment, para. 5702. The materiel Taylor supplied to Fornie was sent to RUF/AFRC forces in Waterloo after their successful attacks on Kono and Makeni towards Freetown. Trial Judgment, para. 5705. The Prosecution did not contend and the Trial Chamber did not find that the materiel from the Burkina Faso Shipment was supplied to Gullit's forces *before* their entry into Freetown. Trial Judgment, para. 5704. However, Rambo Red Goat brought materiel from the Burkina Faso Shipment into Freetown to re-supply Gullit's forces *during* the operations in Freetown itself. Trial Judgment, para. 5708. Rambo Red Goat's forces were predominately charged with carrying out Taylor's and Bockarie's instruction to "make Freetown fearful" after Gullit withdrew. Trial Judgment, para. 5718. Issa Sesay also provided Gullit's forces with materiel after their retreat from Freetown when the combined RUF/AFRC forces were attempting to re-attack Freetown. Trial Judgment, para. 5711. *See* generally Trial Judgment, paras 3472-3477 (Joint RUF/AFRC attempts to re-enter Freetown). In respect of the *materiel Issa Sesay provided after the retreat from Freetown*, the Trial Chamber found that it was not possible to determine whether this materiel was from the Burkina Faso Shipment, Dauda Aruna Fornie or the captured ECOMOG supplies. Trial Judgment, paras 5713, 5714. However, the Trial Chamber further found that it was not necessary to make such a determination, as all three of these possible sources were causally attributable to Taylor. Trial Judgment, para. 5715. It thus considered that all this materiel formed "an amalgamate of fungible resources" for the purposes of determining whether the materiel provided by Taylor was used in and had an effect on the commission of crimes following the retreat from Freetown. Trial Judgment, para. 5716.

1011 Trial Judgment, para. 5715, *citing* Transcript, Issa Sesay, 12 August 2010, p. 46169, Transcript, Issa Sesay, 18 August 2010, pp. 46661-46662.

1012 Trial Judgment, paras 5715, 5830, *citing* Transcript, Issa Sesay, 12 August 2010, p. 46169.

1013 Trial Judgment, paras 5817-5820, fns 12980-12984, 5822, 5823, 5825(xxxix).

1014 Trial Judgment, para. 6968. *See* also *supra* paras 285-292.

1015 Trial Judgment, para. 556.

1016 Trial Judgment, paras 6850-6858, 6861. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused).

1017 Trial Judgment, paras 5094, 5096, 5835(ix), 5837, 6910. *See* generally Trial Judgment, paras 5044-5096 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Sam Bockarie's Leadership: Alleged Trip by Bockarie in March 1999).

1018 Trial Judgment, para. 5084.

1019 Trial Judgment, para. 6863. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused). In March

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1999, the Secretary-General documented that in response to allegations that they were supporting the Sierra Leonean rebels, the Liberian Government issued a statement that they recognised the Kabbah Government as the legitimate government and that they did not, and would not, support any attempt to destabilise Sierra Leone or any other country. Trial Judgment, para. 6858.

1020 Trial Judgment, para. 64.

1021 Trial Judgment, paras 6284-6288, 6451(vii), 6455, 6781, 6940, 6941. *See* generally Trial Judgment, paras 6233-6288 (Peace Process: Lomé). *See* also Trial Judgment, paras 6194-6232 (Peace Process: Abidjan), 6451(iv), 6941. Taylor also advised Foday Sankoh to participate in the Abidjan peace talks in order to obtain arms and ammunition, and the RUF did obtain arms and ammunition in Abidjan. While pre-Indictment, the Trial Chamber found that this incident showed a consistent pattern of conduct by Taylor that continued into and during the Indictment Period.

1022 Trial Judgment, paras 6451(vi), 6455.

1023 Trial Judgment, para. 66.

1024 *See supra* paras 293-296.

1025 *See* Trial Judgment, paras 6863-6875. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused). For example, Exhibit P-334 documents that since 2000, the RUF continued to abduct and forcibly recruit child combatants, while Exhibit D-248 documents the RUF taking UNAMSIL peacekeepers as hostages in early 2000.

1026 Trial Judgment, paras 6455-6458, 6781-6785. *See* generally Trial Judgment, paras 6289-6345 (Peace Process: Release of UN Peacekeepers (1999)), 6346-6415 (Peace Process: Release of UNAMSIL Peacekeepers (2000)), 6416-6450 (Communication with Issa Sesay on Disarmament), 6451-6458 (Peace Process: Summary of Findings and Conclusion).

1027 Taylor promoted Yeaten to Deputy Chairman of the Joint Chiefs of Staff in around 2000, putting him in charge o f the generals of the Liberian armed forces for combat taking place in Liberia. Trial Judgment, para. 2571

1028 Trial Judgment, paras 3882, 6658, 6661-6663, 6767(viii), 6786. *See* generally Trial Judgment, paras 6617-6663 (Leadership and Command Structure: Operations Outside Sierra Leone: RUF/AFRC against Mosquito Spray/LURD in Liberia, 1999). On 21 April 1999, Liberian dissidents in Guinea, mainly former members of ULIMO, led by a person known as "Mosquito Spray", launched an attack on Voinjama, Liberia. A second attack occurred on 10 August 1999 and a third on 8 July 2000. Responsibility for the attacks was claimed by a group called LURD, which had the objective of removing Taylor from power as President of Liberia. Following LURD's attack, Sam Bockarie gave the order to RUF/AFRC troops to move to Lofa County in Liberia in order to support the Liberian Government forces against Mosquito Spray's forces. Trial Judgment, paras 6656, 6658. The Trial Chamber considered evidence of acts outside the geographic scope of the Indictment and the jurisdiction of the Special Court only for contextual purposes or as evidence of a consistent pattern of conduct. Trial Judgment, para. 6655.

1029 Trial Judgment, paras 3883, 3884, 4248(xiii). *See* generally Trial Judgment, paras 3872-3884 (Operational Support: Communications Support: Use of Liberian Communications by the RUF: Communications during Mosquito Spray Incident).

1030 Trial Judgment, para. 66.

1031 Trial Judgment, paras 6564, 6565, 6782. *See* generally Trial Judgment, paras 6553-6567 (Leadership and Command Structure: Sam Bockarie: Allegations that in December 1999 the Accused ordered Sam Bockarie to leave Sierra Leone and come to Liberia). It was undisputed by the Parties that Bockarie left Sierra Leone and went to Liberia on Taylor 's instructions. Trial Judgment, para. 6464.

1032 Trial Judgment, paras 67, 6399. RUF commanders including Morris Kallon and Augustine Gbao captured the peacekeepers following a dispute over the disarmament process in or around Makeni.

1033 Trial Judgment, paras 67, 6458, 6784. *See* generally Trial Judgment, paras 6568-6616 (Leadership and Command Structure: Issa Sesay). The ECOWAS Heads of State collectively decided that Issa Sesay should become interim leader of the RUF, and advised Issa Sesay to cooperate with the Government of Sierra Leone and UNAMSIL. Trial Judgment, paras 6608, 6611-6614.

1034 Trial Judgment, paras 6400, 6451(ix), 6457. *See* generally Trial Judgment, paras 6346-6415 (Peace Process: Release of UNAMSIL Peacekeepers (2000)).

1035 Trial Judgment, paras 6405, 6411, 6414, 6451(ix), 6457, 6783, 6945. *See* generally Trial Judgment, paras 6451-6458 (Peace Process: Summary of Findings and Conclusion), 6767-6787 (Leadership and Command Structure: Summary of Findings and Conclusions). The Trial Chamber accepted Issa Sesay's testimony that Taylor "made him understand" that the RUF had to release the peacekeepers and that he felt he "had to accept" Taylor's instructions. Trial Judgment, paras 6404, 6405, 6411. The Trial Chamber found that while instructing Issa Sesay to release the peacekeepers, Taylor also promised assistance "in the struggle." Trial Judgment, paras 6412, 6457, 6783.

1036 Trial Judgment, para. 67. *See* also Trial Judgment, para. 6421 (TF1–338 testified that in 2001 Sesay complained that Taylor and Liberians were now living in peace and that Sesay wanted to allow disarmament to take place so that he would also "be able to give peace to his own people in Sierra Leone.").

1037 Trial Judgment, para. 6443.

1038 Trial Judgment, paras 6442, 6444, 6447, 6449, 6450, 6451(xi), 6458, 6785. *See* generally Trial Judgment, paras 6416-6450 (Peace Process: Communication with Issa Sesay on Disarmament). ECOWAS and the United Nations supported Taylor's instruction to Bockarie to leave Sierra Leone because this would assist the disarmament and peace process in Sierra Leone. Trial Judgment, paras 6564, 6566, 6782.

1039 Trial Judgment, paras 6419, 6442, 6443, 6451(xi), 6458, 6785.

1040 Trial Judgment, paras 3993, 3996-3998, 4248(xxvii), 6419. *See* generally Trial Judgment, paras 3991-3998 (Operational Support: Financial Support: Allegation that the Accused gave Issa Sesay $USD 15,000).

1041 Trial Judgment, paras 6421, 6447, 6449, 6450, 6451(xi).

1042 Trial Judgment, paras 6420, 6444, 6449, 6458, 6785. The trade of diamonds for arms and ammunition between Taylor and the RUF/AFRC also continued throughout this time. *See* Trial Judgment, paras 5835-5842 (Arms and Ammunition: Summary of Findings and Conclusion), 6139-6149

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(Diamonds: Summary of Findings and Conclusion).

1043 Trial Judgment, paras 6458, 6726-6728, 6767(ix), 6785, 6786. *See* generally Trial Judgment, paras 6664-6728 (Leadership and Command Structure: Operations Outside Sierra Leone: Operations in Liberia and Guinea during Issa Sesay's leadership). From 1999 to 2001, confronted by an army of Liberian dissidents attacking Lofa County, Liberia from Guinea, Taylor sent troops to oppose the incursion, which created a "push-back" situation with the hostile sides engaged in fluctuating battle. AFL and RUF/AFRC forces fought LURD forces in both Liberia and Guinea. Trial Judgment, paras 6722, 6728.

1044 Trial Judgment, paras 6725, 6728, 6767(ix), 6786.

1045 Trial Judgment, para. 6786.

1046 Trial Judgment, paras 5110, 5835(x), 5837, 6910. *See* generally Trial Judgment, paras 5097-5110 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Sam Bockarie's Leadership: Alleged Trip by Bockarie in August to October 1999).

1047 Trial Judgment, paras 4965, 5835(v), 5837, 6910. *See* generally Trial Judgment, paras 4855-4965 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Sam Bockarie's Leadership: Alleged Deliveries of Materiel from Taylor to Sierra Leone).

1048 Trial Judgment, paras 5195, 5835(xiii), 5837, 6910. *See* generally Trial Judgment, paras 5164-5195 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Issa Sesay's Leadership: Alleged Trip by Issa Sesay in May 2000).

1049 Trial Judgment, paras 5224, 5835(xiv), 5837, 6910. *See* generally Trial Judgment, paras 5196-5224 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Issa Sesay's Leadership: Alleged Trips by Issa Sesay in Second Half of 2000 to 2001).

1050 Trial Judgment, paras 5251, 5835(xvi), 5837, 6910. *See* generally Trial Judgment, paras 5225-5252 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Issa Sesay's Leadership: Alleged Trips by Issa Sesay's Subordinates).

1051 Trial Judgment, paras 5250, 5835(xv), 5837, 6910. *See* generally Trial Judgment, paras 5225-5252 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Issa Sesay's Leadership: Alleged Trips by Issa Sesay's Subordinates).

1052 Trial Judgment, paras 5163, 5835(xii), 5837, 6910. *See* generally Trial Judgment, paras 5131-5163 (Arms and Ammunition: Allegations of Direct Supply by the Accused: During Issa Sesay's Leadership: Alleged Deliveries from Taylor).

1053 Trial Judgment, paras 3915-3918, 4248(xvi), 4256, 4262, 6934, 6936. *See* generally Trial Judgment, paras 4248-4262 (Operational Support: Summary of Findings and Conclusion).

1054 Trial Judgment, para. 3915.

1055 Trial Judgment, para. 3916.

1056 Trial Judgment, para. 3916. *See, e.g.*, Trial Judgment, paras 5110 (Sam Bockarie), 5194 (Issa Sesay). *See* also Trial Judgment, paras 5103-5108, 5193 (use of Liberian Government helicopters).

1057 Trial Judgment, paras 4943, 5154, 5167, 5194, 5198, 5199, 5219, 5226, 5227, 5244, 5247, 5829, 6914.

1058 Trial Judgment, paras 5819, 5820, 5827, 5833, 5835(xxxix). *See* generally Trial Judgment, paras 5754-5834 (Arms and Ammunition: Other Sources of Materiel).

1059 Trial Judgment, paras 5743-5745, 5750-5753. *See* also *supra* paras 293-296. *See* generally Trial Judgment, paras 5722-5753 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Post-Freetown Invasion to January 2002).

1060 The West Side Boys were a splinter group formed in May 1999 by Bazzy, an AFRC member, and included a mixed group of AFRC, RUF and NPFL fighters. Bockarie and Bazzy continued to cooperate during military operations. Trial Judgment, para. 6759. Issa Sesay testified that the RUF faced attacks from the West Side Boys during March and April 1999. Trial Judgment, para. 5742.

1061 Trial Judgment, paras 5743-5745, 5750-5753, 5835(xxxvi)(xxxvii), 6911. *See* generally Trial Judgment, paras 5722-5753 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Post-Freetown Invasion to January 2002), paras 5754-5834 (Arms and Ammunition: Other Sources of Materiel).

1062 Trial Judgment, para. 5825.

1063 Trial Judgment, paras 5824-5827. The RUF/AFRC also had recourse to the ECOMOG materiel captured in Kono during the Freetown Invasion, which had been captured with the materiel provided by Taylor. Trial Judgment, paras 5784, 5824, 5830.

1064 Trial Judgment, paras 4247, 4248(xl), 4261, 4262, 6933, 6936. *See* generally Trial Judgment, paras 4194-4247 (Operational Support: Provision of RUF Guesthouse in Monrovia).

1065 Trial Judgment, paras 4247, 4248(xl), 4261, 4262, 6933, 6936.

1066 Trial Judgment, paras 3727, 4248(iv), 4252, 4262, 6928, 6931, 6936. *See* generally Trial Judgment, paras 3667-3731 (Operational Support: Communications Support: Satellite Phones). Sesay was unable to use the phone he had received from Foday Sankoh, which did not have any credit.

1067 Trial Judgment, paras 3727, 4248(iv), 4252, 4262, 6928, 6931, 6936.

1068 Trial Judgment, paras 5930, 5937, 5941, 6139(ii), 6142. *See* generally Trial Judgment, paras 5875-5948 (Diamonds: February 1998–July 1999), 6139-6149 (Diamonds: Summary of Findings and Conclusion).

1069 Trial Judgment, paras 5990, 6139(iv), 6144. *See* generally Trial Judgment, paras 5979-5990 (Diamonds: July 1999–May 2000).

1070 Trial Judgment, paras 6036-6047. Including on one occasion a 36 carat diamond. Trial Judgment, paras 6045, 6145.

1071 Trial Judgment, paras 6048-6050.

1072 Trial Judgment, paras 6057, 6058, 6139(v)(vi), 6145. *See* generally Trial Judgment, paras 5991-6058 (Diamonds: June 2000-2002).

1073 Trial Judgment, paras 6057, 6139(v), 6145. *See* generally Trial Judgment, paras 5991-6058 (Diamonds: June 2000-2002).

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1074 Trial Judgment, paras 6103, 6139(vii), 6147. *See* generally Trial Judgment, paras 6059-6103 (Diamonds: Alleged Facilitation of Diamond Trading by the Accused). The Trial Chamber accepted the evidence of TF1-338, who testified that Taylor told Issa Sesay that because the UN and the international community were investigating Taylor's connection to the RUF/AFRC, Sesay should not bring Taylor diamonds as often as before. TF1-338 further testified that Taylor told Sesay that he would arrange for Sesay to sell the "small diamonds" to someone else so that Sesay could buy materials to use on the front line. Trial Judgment, paras 6062, 6092.

1075 Trial Judgment, paras 6136, 6139(viii), 6148. *See* generally Trial Judgment, paras 6104-6138 (Diamonds: Provision of Mining Equipment and Mining Experts).

1076 Trial Judgment, para. 6137, 6139(ix), 6148. *See* generally Trial Judgment, paras 6104-6138 (Diamonds: Provision of Mining Equipment and Mining Experts). While "there may have been multiple sources of mining equipment and fuel entering Sierra Leone during the Indictment period," Taylor was amongst those sources. Trial Judgment, para. 6132.

1077 Trial Judgment, paras 4009, 4010, 4022, 4248(xxviii). *See* generally Trial Judgment, paras 3999-4022 (Operational Support: Financial Support: Allegations that Issa Sesay sent delegations to Monrovia to collect money from Taylor).

1078 Taylor Notice of Appeal, Grounds 21 and 34. Ground 21 is captioned: "The Trial Chamber erred, or misdirected itself, in law and fact in finding that any alleged military assistance to the RUF or AFRC constituted assistance to crimes."

1079 Taylor Appeal, paras 448, 449, 459 (Ground 21); Appeal transcript, 22 January 2013, p. 49913.

1080 Taylor Appeal, paras 457, 458, 459 (Ground 21). *See* also Taylor Appeal, para. 361.

1081 Taylor Appeal, paras 455, 456, 459 (Ground 21).

1082 Taylor Appeal, paras 327-367 (Ground 16).

1083 *See infra* paras 466-471.

1084 Taylor Appeal, paras 209-211 (Ground 11).

1085 Agreement, Art. 1(2). As such, interpretation of the constitutive documents is subject to Articles 31-33 of the Vienna Convention on the Law of Treaties, recognized as customary international law for treaty interpretation. *See* ICJ Case Concerning the Arbitral Award of 31 July 1989, para. 48 ("These principles are reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, which may in many respects be considered as a codification of existing customary international law on the point.").

1086 *Brima et al.* Appeal Judgment, para. 74, *citing Tadić* Appeal Judgment, para. 190. *See* also Secretary-General's Report on the ICTY, para. 54 ("The Secretary-General believes that all persons who participate in the planning, preparation or execution of serious violations of international humanitarian law in the former Yugoslavia contribute to the commission of the violation and are, therefore, individually responsible."). In this regard, note should also be made of the Moscow Declaration: Statement on Atrocities and London Agreement. The Moscow Declaration provided: "Accordingly, the aforesaid three Allied powers, speaking in the interest of the thirty-two United Nations, hereby solemnly declare and give full warning of their declaration as follows: At the time of granting of any armistice to any government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of free governments which will be erected therein. . . . Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three Allied powers will pursue them to the uttermost ends of the earth and will deliver them to their accusors in order that justice may be done. The above declaration is without prejudice to the case of German criminals whose offenses have no particular geographical localization and who will be punished by joint decision of the government of the Allies." The London Agreement provided: "WHEREAS the United Nations have from time to time made declarations of their intention that War Criminals shall be brought to justice; AND WHEREAS the Moscow Declaration of the 30th October 1943 on German atrocities in Occupied Europe stated that those German Officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments that will be created therein; AND WHEREAS this Declaration was stated to be without prejudice to the case of major criminals whose offenses have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies."

1087 Agreement, Preamble.

1088 Agreement, Preamble ("WHEREAS, the Security Council, in its resolution 1315 (2000) of 14 August 2000, expressed deep concern at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone . . . .").

1089 Agreement, Art. 1(1); Statute, Art. 1(1).

1090 Secretary-General's Report on SCSL, para. 16. *See Kallon, Norman and Kamara* Constitutionality and Lack of Jurisdiction Appeal Decision, paras 40-42; *Fofana* Nature of The Armed Conflict Appeal Decision, paras 18-19 (both discussing Secretary-General's Report on SCSL).

1091 Articles 51(1) of Additional Protocol I and 13(1) of Additional Protocol II provide: "The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, [which are additional to other applicable rules of international law,] shall be observed in all circumstances." Articles 51(2) of Additional Protocol I and 13(2) of Additional Protocol II provide: "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited." These provisions are incorporated and made criminal in Articles 3 and 4 of the Statute. In addition, Article 2 of the Statute concerns situations where the civilian population is further made the object of a widespread or systematic attack. It is well-established that "there exists a **corpus** of general principles and norms on internal armed conflict embracing common Article 3 but having a much greater scope." *Tadić* Appeal Decision on Jurisdiction, para. 116 (emphasis in original). The International Court of Justice has held that the principles

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of distinction and of the protection of the civilian population are "the cardinal principles contained in the texts constituting the fabric of humanitarian law." ICJ Advisory Opinion on Nuclear Weapons, para. 78. It further held that "these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law." ICJ Advisory Opinion on Nuclear Weapons, para. 79.

1092 Article 2 of the Statute ("Crimes against humanity") provides: "The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population:
a. Murder;
b. Extermination;
c. Enslavement;
d. Deportation;
e. Imprisonment;
f. Torture;
g. Rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence;
h. Persecution on political, racial, ethnic or religious grounds;
i. Other inhumane acts."
Article 3 of the Statute ("Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II") provides: "The Special Court shall have the power to prosecute persons who committed or ordered the commission of serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include:
a. Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
b. Collective punishments;
c. Taking of hostages;
d. Acts of terrorism;
e. Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
f. Pillage;
g. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized by civilized peoples;
h. Threats to commit any of the foregoing acts."
Article 4 of the Statute ("Other serious violations of international humanitarian law") provides: "The Special Court shall have the power to prosecute those persons who committed the following serious violations of international humanitarian law:
a. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
b. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
c. Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities."

1093 *Brima et al.* Appeal Judgment, para. 72 (emphasis added).

1094 *Brima et al.* Appeal Judgment, paras 72, 74, *citing Tadić* Appeal Judgment, paras 186, 189-193. By its plain language, "*otherwise* aided and abetted" ensures that all those who are individually criminally liable under customary international law may be held personally culpable under the Statute.

1095 Rule 72*bis* provides: "The applicable laws of the Special Court include:

(i) the Statute, the Agreement, and the Rules;

(ii) where appropriate, other applicable treaties and the principles and rules of international customary law;

(iii) general principles of law derived from national laws of legal systems of the world including, as appropriate, the national laws of the Republic of Sierra Leone, provided that those principles are not inconsistent with the Statute, the Agreement and with international customary law and internationally recognized norms and standards."

1096 Consistent with the principle of legality. *Kallon, Norman and Kamara* Appeal Decision on Constitutionality and Lack of Jurisdiction, paras 80-84; *Sesay et al.* Appeal Judgment, paras 888-891. *See* also Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, paras 9 and 12 (which provided that the "applicable law [of the Special Court] includes international as well as Sierra Leonean law" and in relation to the crimes under international law specifically noted that: "[i]n recognition of the principle of legality, in particular *nullum crimen sine* lege, and the prohibition on retroactive criminal legislation, the international crimes enumerated, are crimes considered to have the character of customary international law at the time of the alleged commission of the crime.").

1097 Statute, Art. 20 ("The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and Rwanda.").

1098 Trial Judgment, paras 482-485 (internal quotations omitted) (internal citations omitted).

1099 Taylor Notice of Appeal, para. 97 (Ground 34); Taylor Appeal, para. 452.

1100 Taylor Appeal, paras 448, 449, 459; Appeal transcript, 22 January 2013, p. 49913

1101 Taylor Appeal, paras 457, 458, 459. *See* also Taylor Appeal, para. 361.

1102 Taylor Appeal, paras 455, 456, 459.

1103 Taylor Notice of Appeal, Ground 34.

1104 Taylor Appeal, para. 318, fn. 642.

1105 Prosecution Response, para. 639.

1106 Oral Hearing Scheduling Order ("(iv) Whether acts of assistance not to the crime "as such" can substantially contribute to the commission of the crime for aiding and abetting liability. Whether the Trial Chamber's findings meet the "as such" standard.").

1107 Taylor Appeal, para. 452 (emphasis in original) The Defence does not challenge the *actus reus* elements as articulated by the Trial Chamber; rather, it submits that "the standard articulated was not erroneous but the standard applied was erroneous." Appeal transcript, 22 January 2013, pp. 49900, 49901.

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1108 The Appeals Chamber adopts the term "physical actor" to describe the person or persons who physically perform(s) the *actus reus* of the crime. Children under the age of 15 years performed the *actus reus* of some of the crimes found by the Trial Chamber, including the most horrific of atrocities. Pursuant to Article 7(1) of the Statute, the Special Court does not have jurisdiction over any person who was under the age of 15 at the time of the alleged commission of the crime. Terms such as "principal" or "perpetrator" connote individual criminal liability for the commission of the crime.

1109 *See, e.g.*, Appeal transcript, 22 January 2013, p. 49913 ("Now, your Honours, this reasoning is not sufficient. It does not reflect the requirements of aiding and abetting. It does not reflect the requirement of substantial contribution that's been applied in previous cases at the ICTY. There's no finding as to the identity of the perpetrators. That's the first question mark. There's no finding as to the instrumentalities used. There's no finding that those instrumentalities came from Charles Taylor. There's no finding that those instrumentalities had any impact, much less a substantial impact, on the decision of these three unidentified perpetrators to commit the crime.").

1110 Taylor Notice of Appeal, para. 97 (Ground 34). *See* also Taylor Appeal, para. 453 (the "'substantial contribution' must be to the criminal conduct itself"), 691 ("what is required in such circumstances is that the aider and abettor has provided assistance to the crime, and to the individuals perpetrating that crime"); Appeal transcript, 22 January 2013, p. 49902 ("[T]he support or the aiding, whatever it may be, must be to the perpetration of a specific crime . . . .").

1111 Appeal transcript, 22 January 2013, pp. 49900-49903 (comparing the Trial Chamber's articulation of the *actus reus* and that provided by the Trial Chamber in *Mrksić et al.*: "Aiding and abetting is a form of accomplice liability which has been defined as the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a *certain* crime") (*Mrksić et al.* Trial Judgment, para. 551) (emphasis added); Taylor Appeal, para. 453 ("the inquiry must always be framed properly: did the assistance encourage the crime in particular?"). *See* also, for example, Taylor Appeal, paras 658, 665 ("the Chamber failed to identify and specify which precise crimes were aided and abetted in consequence of the Guesthouse"), 666 ("all without any pronouncement of the specific crimes that were aided and abetted by virtue of the Guesthouse"), 682, 694 (both arguing that the assistance must be to the perpetration of a *certain* crime) (emphasis added); Appeal transcript, 22 January 2013, p. 49917 (arguing that the Trial Chamber's reasoning is "the antithesis of making a finding that there has been a substantial contribution to a specific crime").

1112 Taylor Notice of Appeal, para. 57 (Ground 21).

1113 Taylor Appeal, para. 691. *See, e.g.*, Appeal transcript, 22 January 2013, pp 49917, 49918 ("[A]ccording to the Trial Chamber, if you further—if you do anything to perpetuate the existence of an organisation that you know in part, aside from many other activities, you know in part engages in criminal actions, then that alone is sufficient to find you guilty of assisting any and all crimes committed by that organisation. This is the liability crucible applied by the Chamber.").

1114 Taylor Notice of Appeal, para. 57 (Ground 21), *referencing* Trial Judgment, paras 4262, 6936

1115 Taylor Notice of Appeal, para. 57 (Ground 21), *referencing* Trial Judgment, paras 5835(xl), 5842, 6914.

1116 Appeal transcript, 22 January 2013, p. 49923, *referencing* Trial Judgment, para. 6949.

1117 Taylor Appeal, paras 646, 649, 651, 652, 653, 654, 656, 658 (Ground 27—Communications Support), 665, 666 (Ground 28—RUF Guesthouse), 674, 682 (Ground 29—Herbalists), 682 (Ground 30—Medical Support), 690, 691-694, 706-708 (Ground 31—Financial Support), 706-708 (Ground 32—Diamonds).

1118 Appeal transcript, 22 January 2013, pp 49903-49907, *citing Blagojević and Jokić* Appeal Judgment, *Ndindabahizi* Appeal Judgment, *Nahimana et al.* Appeal Judgment. It submits that in *Blagojević and Jokić*, the ICTY Appeals Chamber relied on the finding that "Jokić's acts of assistance concerned co-ordinating, sending and monitoring resources to actually go and commit the crime." It further argues that in *Ndindabahizi*, the ICTR Appeals Chamber found that "in the absence of specific evidence connecting [the accused's] words specifically to the crime against the victim, that there was no aiding and abetting." Finally, it submits that in *Nahimana et al.*, the ICTR Appeals Chamber found that acts did not substantially contribute to later crimes in part because of the length of time between the act and the crime.

1119 *See, e.g.*, Appeal transcript, 22 January 2013, p. 49903 ("In other words, JCE is being described as 'The form of liability that deals with assistance to an organisation, and aiding and abetting deals with the form of liability concerning direct assistance or abetting, encouragement towards a specific crime.'").

1120 Taylor Appeal, paras 453, 456; Taylor Reply, para. 71; Appeal transcript, 22 January 2013, pp 49903, 49918.

1121 Prosecution Response, para. 402, *citing Blaškić* Appeal Judgment, paras 43, 48, *Blagojević and Jokić* Appeal Judgment, para. 187, *Furundžija* Trial Judgment, para. 232; Appeal transcript, 23 January 2013, p. 49961.

1122 Prosecution Response, paras 401-403. *See* also Appeal transcript, 22 January 2013, pp. 49853, 49854.

1123 Appeal transcript, 23 January 2013, p. 49961-49964.

1124 Appeal transcript, 23 January 2013, p. 49968.

1125 Taylor Reply, para. 71.

1126 Taylor Reply, para. 71.

1127 Taylor Reply, para. 71.

1128 The facts of a case may involve multiple acts or conduct which, considered cumulatively, can be found to substantially contribute to the crime charged. As the ICTY Appeals Chamber has held, it is not necessary to show that "each given act constituted substantial assistance in order to satisfy the *actus reus* requirement of aiding and abetting." *Blagojević and Jokić* Appeal Judgment, para. 284. This is common-sense. As this Appeals Chamber has held, a trier of fact is called upon to determine whether the *accused's acts and conduct*, not each individual act, had a substantial effect on the commission of the charged crime. *Sesay et al*. Appeal Judgment, para. 545. *See*, *e.g.*, *Renzaho* Appeal Judgment, paras 336, 337 (Renzaho was responsible for aiding and abetting the killings of Tutsi civilians at roadblocks on the basis that he ordered the establishment of roadblocks, sanctioned "the conduct at them" and provided "continued material support for the killings through the distribution of weapons." The ICTR Appeals Chamber in *Renzaho* affirmed

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the accused's conviction notwithstanding its finding that "there was only scant evidence as to how the weapons were used", reasoning that the accused encouraged the physical actors to commit the charged crimes by his acts and conduct); *Kamuhanda* Appeal Judgment, para. 72 (although the Appeals Chamber concluded at para. 77 that ordering liability fully encapsulated the accused's criminal conduct). *Contra* Taylor Appeal, Grounds 23-32. The Appeals Chamber accordingly rejects submissions that particular acts of assistance, encouragement, moral support or facilitation did not individually substantially contribute to the commission of crimes, as these submissions, even if accepted, fail to demonstrate an error.

1129 *Sesay et al.* Appeal Judgment, paras 545 ("The question, then, is whether Gbao's presence outside the camp can be said to have had a substantial effect on the perpetration of the crime."), 1170 ("Aiding and abetting . . . require[s] that the accused contribute to the crimes, to an even higher degree. [This] form of liability only attach[es] where the accused 'substantially' contributed to the crimes."). *Accord Fofana and Kondewa* Appeal Judgment, paras 52, 71, 72 (the *actus reus* of aiding and abetting liability is having a substantial effect on the perpetration of the crime). *See* also *Brima et al.* Appeal Judgment, para. 305 (applying *actus reus* of aiding and abetting liability established at *Brima et al.* Trial Judgment, para. 775 ("The *actus reus* of 'aiding and abetting' requires that the accused gave practical assistance, encouragement or moral support which had a substantial effect on the perpetration of a crime. 'Aiding and abetting' may be constituted by contribution to the planning, preparation or execution of a finally completed crime.")). In the Trial Judgment, the jurisprudence of this Court and the jurisprudence of other international tribunals, "substantial contribution" and "substantial effect" are used interchangeably and are synonymous. For clarity, the Appeals Chamber prefers and will use the formulation "substantial effect".

1130 *Supra* para. 353. The Parties agreed that the Trial Chamber properly articulated the law. Appeal transcript, 22 January 2013, pp. 49900, 49901; Prosecution Response, paras 401, 402.

1131 *See* Taylor Appeal, paras 453, 658, 665, 666, 691.

1132 Trial Judgment, para. 482.

1133 The Trial Chamber thus directed itself to determine whether Taylor's acts and conduct had a substantial effect on the commission of each crime with which he was charged. The Defence contends that the Trial Chamber should have directed itself to determine the manner of such assistance, that it was to the physical actor and used in the commission of the specific crime.

1134 Article 6(3) reads: "The fact that any of the acts referred to in articles 2 to 4 of the present Statute was *committed by a subordinate* does not relieve *his or her superior* of criminal responsibility if he or she knew or had reason to know that *the subordinate* was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or punish *the perpetrators thereof*." (emphasis added).

1135 Provided that the other elements of individual criminal liability having been proved beyond a reasonable doubt. *See infra* paras 413-437.

1136 *Sesay et al*. Appeal Judgment, paras 545, 1170; *Fofana and Kondewa* Appeal Judgment, paras 52, 71, 72. *Accord Furundžija* Trial Judgment (having extensively reviewed sources of customary international law regarding the *actus reus* of aiding and abetting liability (paras 192-235), the Trial Chamber concluded: "In sum, the Trial Chamber holds that the *actus reus* of aiding and abetting in international criminal law requires practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime.") (*confirmed by Furundžija* Appeal Judgment, para. 126; *Aleksovski* Appeal Judgment, para. 162; *Blaškić* Appeal Judgement, para. 46); *Tadić* Trial Judgment, para. 692 (having extensively reviewed sources of customary international law regarding the *actus reus* of aiding and abetting liability (paras 678-692), the Trial Chamber concluded: "In sum, the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident.") (*adopted by Čelibići* Trial Judgment, paras 326, 327; *Aleksovski* Trial Judgment, paras 61, 62 *and confirmed by Čelibići* Appeal Judgment, para. 352 ("The Trial Chamber had earlier defined aiding and abetting as: '*[including] all acts of assistance that lend encouragement or support to the perpetration of an offence* and which are accompanied by the requisite *mens rea*. Subject to the caveat that it be found to have contributed to, or have had an effect on, the commission of the crime, the relevant act of assistance may be removed both in time and place from the actual commission of the offence.' The Prosecution does not challenge that definition. *Subject to the observation that the acts of assistance, encouragement or support must have a substantial effect on the perpetration of the crime, the Appeals Chamber also accepts the statement as accurate*.") (emphasis added); *Aleksovski* Appeal Judgment, para. 164); *Kayishema and Ruzindana* Appeal Judgment, paras 186 ("The Appeals Chamber finds that [the Trial Chamber's] statement [of the law] corresponds to the elements of individual criminal responsibility as set out, as follows, by the jurisprudence of this Tribunal and that of ICTY: (1) The requisite *actus reus* for such responsibility [under Article 6(1) of the ICTR Statute] is constituted by an act of participation which in fact contributes to, or has an effect on, the commission of the crime. Hence, this participation must have a direct and substantial effect on the commission of the illegal act."), 198 ("In line with the relevant international case law, referred to in the foregoing analysis, a person may be held criminally liable for any conduct, where it is determined that he participated knowingly in the commission of a crime, if his participation directly and substantially contributed to the perpetration of the crime.") (*citing Tadić* Trial Judgment, paras. 674 and 689, *Čelebići* Trial Judgment, para. 326). *See* also *Brđanin* Appeal Judgment, paras 348, 349 ("What is required is that the support of the aider and abettor has a substantial effect on the perpetration of the crime. . . . The Appeals Chamber finds that Brđanin has not shown that the Trial Chamber erred in concluding beyond reasonable doubt that Brđanin rendered practical assistance and a substantial contribution to the Bosnian Serb forces carrying out the attacks during which destruction occurred."); *Blagojević and Jokić* Appeal Judgment, para. 193 ("The Appeals Chamber considers that Jokić's characterization of his conduct as the mere performance of routine duties in an organized structure is irrelevant to the principal question of whether his impugned conduct had a substantial effect on the perpetration of the

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crime."); *Nahimana et al.* Appeal Judgment, paras 672 ("The Appeals Chamber would begin by recalling that, in order to convict a defendant of aiding and abetting another in the commission of a crime, it is unnecessary to prove that he had authority over that other person; it is sufficient to prove that the defendant's acts or omissions substantially contributed to the commission of the crime by the principal perpetrator."), 934 ("Nonetheless, those publications, broadcasts and activities could have substantially contributed to the commission of crimes against humanity after 6 April 1994, for which a defendant could be held liable under other modes of responsibility pleaded, such as planning, instigation or aiding and abetting. . . . The Appeals Chamber will consider below whether it has been established that the *Kangura* issues, RTLM broadcasts and activities of the CDR between 1 January and 6 April 1994 substantially contributed to the commission of crimes against humanity after 6 April 1994."). *Cf. Blagojević and Jokić* Appeal Judgment, para. 282 ("In this context, the Appeals Chamber cannot accept that the drafters of Protocol I and the Statute intended to limit a superior's obligation to prevent or punish violations of international humanitarian law to only those individuals physically committing the material elements of a crime and *to somehow exclude subordinates who as accomplices substantially contributed to the completion of the crime*.") (emphasis added).

1137 *Accord Nahimana et al.* Appeal Judgment, para. 492 ("Where a person is accused of having planned, instigated, ordered or aided and abetted the commission of genocide by one or more other persons pursuant to Article 6(1) of the Statute, the Prosecutor must establish that the accused's acts or omissions substantially contributed to the commission of acts of genocide."); *Renzaho* Appeal Judgment, para. 315; *Kamuhanda* Appeal Judgment, para. 75; *Kayishema and Ruzindana* Appeal Judgment, paras 186, 198; Trial Judgment, para. 477; *Milutinović et al.* Trial Judgment, para. 88; *Strugar* Trial Judgment, para. 332. *See* also *Kordić and Čerkez* Appeal Judgment, paras 25-35.

1138 *Sesay et al.* Appeal Judgment, paras 687, 1170; *Brima et al.* Appeal Judgment, para. 301. *Accord Nahimana et al.* Appeal Judgment, paras 492, 934; *Kordić and Čerkez* Appeal Judgment, para. 26; *Kayishema and Ruzindana* Appeal Judgment, paras 186, 198.

1139 *Accord Nahimana et al.* Appeal Judgment, paras 492, 502, 934; *Kordić and Čerkez* Appeal Judgment, para. 27; *Kayishema and Ruzindana* Appeal Judgment, paras 186, 198.

1140 *Furundžija* Trial and Appeal Judgments.

1141 *Sesay et al.* Trial and Appeal Judgments.

1142 *Simić et al.* Trial and Appeal Judgments.

1143 *Brđanin* Trial and Appeal Judgments.

1144 *Justice* Case. *See, e.g. Justice* Case, p. 1118 ("The defendant Rothenberger is guilty of taking a minor but consenting part in the Night and Fog program. He aided and abetted in the program of racial persecution, and notwithstanding his many protestations to the contrary he materially contributed toward the prostitution of the Ministry of Justice and the courts and their subordination to the arbitrary will of Hitler, the Party minions, and the police.").

1145 *Krstić* Appeal Judgment; *Blagojević and Jokić* Trial and Appeal Judgment.

1146 *See, e.g.*, *Brima et al.* Trial Judgment, para. (Kamara provided machetes to troops who committed crimes during "Operation Cut Hand"); *Renzaho* Appeal Judgment, paras 336, 337 (The Appeals Chamber found: "the only reasonable conclusion was that Renzaho's instructions to erect roadblocks and to distribute weapons *encouraged* the people manning the roadblocks to kill Tutsis and therefore substantially contributed to the killings at them.") (emphasis added); *Bagaragaza* Sentencing Judgment, para. 25 (Bagaragaza provided heavy weapons which he had been concealing in his factories for the Army Chief of Staff, authorised personnel from his factories to participate in the attacks and provided vehicles and fuel which were used to transport members of the *Interahamwe* to crime sites); *Krstić* Appeal Judgment, paras 137, 144 (Krstić, as Chief of Staff and Commander of the Drina Corps of the VRS, allowed Drina Corps buses to be used to transport prisoners to execution sites); *Ntakirutimana* Appeal Judgment, para. 536 (Gérard Ntakirutimana aided and abetted genocide by procuring gendarmes and ammunition for the attack).

1147 *See, e.g.*, *Lukić and Lukić* Appeal Judgment, para. 438 (Lukić by his "armed presence" aided and abetted the crimes of murder, other inhumane acts and cruel treatment); *Rohde* Case, p. 56; *Almelo* Trial, p. 35; *Ntakirutimana* Appeal Judgment, para. 532 (Elizaphan Ntakirutimana aided and abetted genocide by, *inter alia*, transporting armed attackers to crime sites); *Nahimana et al.* Appeal Judgment, paras 672, 965 (Ngeze "set up, manned and supervised roadblocks in Gisenyi in 1994 that identified targeted Tutsi civilians who were subsequently taken to and killed at the *Commune Rouge*."); *Renzaho* Appeal Judgment, para. 336; *Limaj et al.* Trial Judgment, para. 658 (Bala blindfolded L12, brought him to a barn where he was beaten and was present during the incident); *Kalimanzira* Appeal Judgment, paras 81, 87 (Kalimanzira falsely encouraged Tutsis to take refuge at Kabuye hill).

1148 *See, e.g.*, *Flick* Case; *Bagaragaza* Sentencing Judgment, para. 25 (Bagaragaza provided a substantial amount of money for the purpose of buying alcohol to motivate the *Interahamwe* to continue with the killings); *Gacumbitsi* Appeal Judgement, para. 124 (Gacumbitsi, by expelling his tenants who were subsequently killed, and "knowing that by so doing he was exposing them to the risk of being targeted by Hutu attackers on grounds of their ethnic origin" aided and abetted murder.); *Seromba* Appeal Judgment, para. 183 (Seromba fired Tutsi employees and turned away victims who were seeking refuge); *Karera* Appeal Judgment, para. 322 ("By instructing the *Interahamwe* to arrest Gakuru and telling them that Gakuru was an "*Inyenzi*", it was reasonable to conclude that the Appellant substantially contributed to the commission of his murder through specifically assisting and providing moral support to the principal perpetrators."); *Rukundo* Appeal Judgment, para. 176 (Rukundo "identified Tutsi refugees to soldiers and *Interahamwe* who subsequently removed and then killed them."); *Einsatzgruppen* Case, p. 569 (Klingelhoefer located and turned over lists of Communists).

1149 *See, e.g.*, *Ministries* Case, pp. 620-621, 702, 706, 715 (Puhl was the managing director and vice president of the Reich Bank and was found guilty for having directed and supervised the execution of an agreement between Funk and Himmler for the receipt, classification, deposit, conversion, and disposal of stolen properties and loot taken by the SS from victims exterminated in concentration camps. The Tribunal established that "[h]is part in this transaction was

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not that of a mere messenger or businessman. He went beyond the ordinary range of his duties to give directions that the matter be handled secretly by the appropriate departments of the bank. . . . He had no part in the actual extermination of Jews and other concentration camp inmates, and we have no doubt that he would not, even under orders, have participated in that part of the program. But without doubt he was a consenting participant in part of the execution of the entire plan, although his participation was not a major one."); IMT Judgment, pp 300 ("Frick drafted, signed, and administered many laws designed to eliminate Jews from German life and economy. His work formed the basis of the Nuremberg Decrees, and he was active in enforcing them."), 331-332 (Speer was held responsible under Counts Three and Four for his participation in the slave labor program. Speer transmitted to Sauckel an estimate of the total number of workers needed. Sauckel obtained the labour and allocated it to the various industries in accordance with instructions supplied by Speer. The IMT found that "Speer's position was such that he was not directly concerned with the cruelty in the administration of the slave labor program, although he was aware of its existence. For example, at meetings of the Central Planning Board he was informed that his demands for labor were so large as to necessitate violent methods in recruiting."); *Justice* Case, pp 1095 (Klemm was State Secretary in the Ministry of Justice and "took part in drafting the law to make treason retroactive and applying it to annexed territories"), 1099 ("The defendant Klemm was familiar with the entire correspondence on this matter. He specifically directed the witness Mitzschke to obtain reports. His own testimony shows that he knew of the failure to take effective action in the case cited, and it is the judgment of this Tribunal *that he knowingly was connected with the part of the Ministry of Justice in the suppression of the punishment of those persons who participated in the murder of Allied airmen*.") (emphasis added); *Brđanin* Trial Judgment, paras 663-670 (Brđanin was responsible for ARK Crisis Staff decisions to disarm Bosnian Muslims and Bosnian Croats throughout the ARK, which created an imbalance of arms and weapons favouring the Bosnian Serbs in the Bosnian Krajina); *Krstić* Appeal Judgment, paras 137, 144; *Blagojević and Jokić* Appeal Judgment, para. 134; *Simić* Appeal Judgment, para. 116 (Simić, as President of the Crisis Staff, worked together with the police, paramilitaries and JNA to maintain the system of arrests and detention of non-Serb civilians, and that he had an important influence on the unlawful arrests and detention); *Simić* Appeal Judgment, paras 132-134 (Simić, as President of the Crisis Staff, was responsible for the health, safety and welfare of all citizens in the area administered by the Crisis Staff, and he had an obligation to provide for appropriate detention facilities. His deliberate denial of adequate medical care to the detainees in these detention facilities lent substantial assistance to the confinement under inhumane conditions prevailing therein.).

1150 *See, e.g., Fofana and Kondewa* Trial Judgment, para. 722 (Fofana's speech at the passing out parade in December 1997 was clearly an encouragement and support of Norman's instructions to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses); *Ministries* Case, pp. 575, 576 (Dietrich, as chief of the press department, fostered and directed a persistent campaign to arouse the hatred of the German people against Jews); IMT Judgment, pp 302-303 (Streicher was held responsible for Crimes against Humanity in that "[i]n his speeches and articles, week after week, month after month, he infected the German mind with the virus of anti-Semitism, and incited the German People to active persecution." The IMT found that "[w]ith knowledge of the extermination of the Jews in the Occupied Eastern Territory, this defendant continued to write and publish his propaganda of death."); *Brima et al.* Trial Judgment, paras 775, 1786, 1940 (Brima and Kamara were present during the commission of crimes, and the Trial Chamber found that given the authority of the accused their presence gave moral support to the principal perpetrators); *Kayishema and Ruzindana* Appeal Judgment, paras 201, 202; *Aleksovski* Trial Judgment, para. 87 ("By being present during the mistreatment, and yet not objecting to it notwithstanding its systematic nature and the authority he had over its perpetrators, the accused was necessarily aware that such tacit approval would be construed as a sign of his support and encouragement. He thus contributed substantially to the mistreatment."); *Furundžija* Trial Judgment, para. 209; *Synagogue* Case, pp. 53, 56 (the presence of the accused at the scene of the crime, combined with his status as an "alter Kämpfer", a long-time militant of the Nazi party, and his knowledge of the criminal enterprise, were deemed sufficient for a conviction).

1151 *See, e.g., Blagojević and Jokić* Appeal Judgment, para. 134; *Rohde* Case (an accused was convicted of being concerned in the killing of four women because he worked the oven in the prison crematorium); *Pohl* Case, para. 989 (Pohl was convicted as an accessory in relation to Action Reinhardt because his role was to "conserve and account for the loot" in the "after-phases" of the operation); *Ministries* Case, paras 620, 621 (Puhl, a senior *Reichbank* official, was convicted as an accessory for knowingly participating in the disposal of property stolen from concentration camp inmates).

1152 *See, e.g.*, *Pohl* Case, pp. 1000, 1021, 1036.

1153 *See, e.g.*, *Justice* Case; *Hisakasu and Others* Case; *Isayama and Others* Case; *Swada and Others* Case.

1154 *See, e.g.*, *Fofana and Kondewa* Trial Judgment, paras 735, 736 (Kondewa addressed the fighters at the passing out parade and effectively gave his blessings for the criminal acts as the High Priest. The Trial Chamber noted that "no fighter would go to war without Kondewa's blessings because they believed that Kondewa transferred his mystical powers to them and made them immune to bullets."); *Seromba* Trial Judgment, para. 269 (Seromba, a priest, advised a bulldozer operator that he could destroy the church in which Tutsi refugees were hiding; on appeal, the Appeals Chamber found that this satisfied the *actus reus* of commission liability, but did not suggest that it did not satisfy the *actus reus* of aiding and abetting liability as a matter of law or fact).

1155 Appeal transcript, 22 January 2013, pp 49903-49907, *citing Blagojević and Jokić* Appeal Judgment, *Ndindabahizi* Appeal Judgment, *Nahimana et al.* Appeal Judgment.

1156 This and other Appeals Chambers have consistently rejected submissions mistaking factual considerations concerning the manner in which assistance was provided for legal requirements applicable in all cases, as discussed in this paragraph and the citations therein.

1157 *Fofana and Kondewa* Appeal Judgment, para. 72. *Accord Kalimanzira* Appeal Judgment, para. 87, fn 238; *Ntagerura et al.* Appeal Judgment, para. 372; *Mrkšić and Sljivančanin* Appeal Judgment, para. 81; *Simić* Appeal Judgment, para. 85; *Blaškić* Appeal Judgment, para. 48; *Čelebići* Appeal

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Judgment, para. 352.

1158 *Sesay et al.* Appeal Judgment, para. 541. Likewise, where the accused was outside a building in which a crime was being committed, the Appeals Chamber held "it is within the discretion of a reasonable trier of fact to hold that such presence did have a substantial effect on the perpetration of the offence." *Sesay et al.* Appeal Judgment, para. 545.

1159 *Brđanin* Appeal Judgment, para. 355. *Accord Krstić* Appeal Judgment, para. 143. *See* also *Karera* Appeal Judgment, para. 318 (instigating liability).

1160 *Brđanin* Appeal Judgment, para. 349. *Accord Kalimanzira* Appeal Judgment, para. 87; STL Applicable Law Decision, para. 227; *Vasiljević* Appeal Judgment, para. 102; *Tadić* Appeal Judgment, para. 229.

1161 *Simić* Appeal Judgment, para. 103. *Accord Nahimana et al.* Appeal Judgment, paras 672, 966; *Rukundo* Appeal Judgment, para. 92; *Muhimana* Appeal Judgment, para. 189 ("For an accused to be convicted of abetting an offence, it is not necessary to prove that he had authority over the principal perpetrator."); *Aleksovski* Appeal Judgment, para. 170.

1162 *Sesay et al*. Appeal Judgment, para. 769; *Fofana and Kondewa* Appeal Judgment, para. 75. *Accord Ntawukulilyayo* Appeal Judgment, para. 214; *Lukić and Lukić* Appeal Judgment, para. 468; *Kalimanzira* Appeal Judgment, para. 86; Rukundo Appeal Judgment, para. 52; *Blagojević and Jokić* Appeal Judgment, para. 134. This principle applies to all forms of criminal participation in crimes. *See Sesay et al*. Appeal Judgment, para. 1140.

1163 Taylor Reply, para. 71.

1164 Taylor Notice of Appeal, para. 57 (Ground 21), *referencing* Trial Judgment, paras 4262, 6936

1165 Taylor Notice of Appeal, para. 57 (Ground 21), *referencing* Trial Judgment, paras 5835(xl), 5842, 6914.

1166 *Brima et al.* Appeal Judgment, para. 305.

1167 The Appeals Chamber declined to enter a conviction on appeal, as Kanu had already been convicted for planning the commission of the crimes. *Brima et al.* Appeal Judgment, para. 306. The Appeals Chamber notes that the *actus reus* of the planning convictions and the *actus reus* of aiding and abetting in this case were distinct acts.

1168 *Brđanin* Trial Judgment, para. 65. Following the commencement of the armed conflict, crimes against the non-Serb civilian population were committed in the implementation of the Strategic Plan. *Brđanin* Trial Judgment, para. 100.

1169 *Brđanin* Trial Judgment, para. 118. The Trial Chamber found that attacks by Bosnian Serb forces against non-Serb towns, villages and neighbourhoods, which involved the commission of the crimes of killings, torture, destruction of homes and religious buildings, appropriation and humiliation and degradation, were essential to the implementation of the Strategic Plan in the ARK. *Brđanin* Trial Judgment, paras 471, 530, 665, 673, 1055.

1170 The Trial Chamber found that Brđanin, a civilian leader, knew that crimes were being committed in the execution of the Strategic Plan. *Brđanin* Trial Judgment, paras 333, 349, 350. Brđanin was President of the ARK Crisis Staff and War Presidency. *Brđanin* Trial Judgment, para. 289. The Trial Chamber found that he was "one of the most significant political figures in the ARK." *Brđanin* Trial Judgment, paras 291-304.

1171 Notably, the Trial Chamber did not convict Brđanin of killings, torture and destruction of homes and religious buildings that were not committed "in context of the armed attacks by the Bosnian Serb forces on non-Serb towns, villages and neighbourhoods." *See, e.g.*, *Brđanin* Trial Judgment, paras 471, 530, 665, 673.

1172 *Brđanin* Trial Judgment, paras 469, 528, 663, 673, 1056.

1173 The accused largely did not have *de jure* or *de facto* authority over the Bosnian Serb forces, although there was close cooperation between civilian authorities and these forces. *Brđanin* Trial Judgment, paras 211-229 (the ARK Crisis staff was found to have *de facto* authority over the police, but not over the VRS (army) or paramilitary units).

1174 *Brđanin* Trial Judgment, paras 470, 529, 664, 673, 1056.

1175 *Brđanin* Trial Judgment, paras 471, 530, 665, 673, 1057.

1176 *Brđanin* Trial Judgment, paras 1073, 1074.

1177 *Brđanin* Trial Judgment, para. 1069.

1178 *Brđanin* Appeal Judgment, paras 240, 259, 344, 349. While Brđanin argued that "it must be shown that the physical perpetrators were assisted by, encouraged by, or received moral support from him," the Appeals Chamber noted that Brđanin failed to show it was unreasonable for the Trial Chamber to find that he made "a substantial contribution to [the Bosnian Serb] forces." *Brđanin* Appeal Judgment, paras 346, 347. *See* also *Brđanin* Appeal Judgment, paras 240, 259-264, 290-303, 344-350. The ICTY Appeals Chamber emphasised that there was no requirement of an agreement or plan between the aider and abettor and the physical actor, that the physical actor need not know of the aider and abettor's contribution and that it is not necessary as a matter of law to identify the physical actors in order to establish that the accused's acts and conduct had a substantial effect on the commission of the crimes. *Brđanin* Appeal Judgment, paras 263, 349, 355.

1179 *See Brđanin* Trial Judgment, paras 400-465.

1180 *See, e.g.*, *Brđanin* Trial Judgment, para. 476 (all crimes found proved beyond a reasonable doubt).

1181 *Brđanin* Trial Judgment, paras 1069, 1073, 1074.

1182 The Defence incorrectly submits that Jokić's "acts of assistance concerned co-ordinating, sending and monitoring resources *to actually go and commit the crime*." Appeal transcript, 22 January 2013, p. 49904 (emphasis added). Jokić provided assistance to the crimes by sending personnel and equipment to dig mass graves for the killed victims. *See Blagojević and Jokić* Trial Judgment, paras 764, 767, 769, 770, 772. In rejecting Jokić's submission on appeal that he did not directly assist the commission of the crimes, the ICTY Appeals Chamber held that "[a]iding and abetting generally involves a lesser degree of directness of participation in the commission of the crime than that required to establish primary liability for an offence. *Blagojević and Jokić* Appeal Judgment, para. 192.

1183 *Blagojević and Jokić* Trial Judgment, para. 729. The ICTY Appeals Chamber affirmed the Trial Chamber's findings. Blagojević argued on appeal that personnel from his unit were not direct participants in many crimes and were only a small part of the total number of participants. The ICTY Appeals Chamber rejected that submission, holding that "the question of whether a given act constitutes substantial assistance to a crime requires a fact-based inquiry" and

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recalling that in the *Krstić* Appeal Judgment it entered convictions based on similar findings. *Blagojević and Jokić* Appeal Judgment, paras 132-134, *citing Krstić* Appeal Judgment, paras 135-138.

1184 *Blagojević and Jokić* Trial Judgment, para. 747. With respect to acts of persecution for which Blagojević was convicted, the personnel attributable to Blagojević did not participate in the perpetration of all those crimes and their participation was more limited in scope than other forces. *Blagojević and Jokić* Trial Judgment, paras 755-757; *Blagojević and Jokić* Appeal Judgment, para. 134, *citing, e.g., Blagojević and Jokić* Trial Judgment, paras 191, 835. The Appeals Chamber understands that the *Blagojević and Jokić* Trial Chamber relied on a causal attribution to establish that Blagojević's acts and conduct had a substantial effect on the crimes.

1185 *Krstić* Appeal Judgment, para. 137.

1186 Blagojević did not share a common purpose to commit killings or persecution. Krstić did not share a common purpose to commit genocide.

1187 *Simić* Appeal Judgment, para. 118.

1188 *Simić* Appeal Judgment, paras 106, 107, *citing Simić et al.* Trial Judgment, paras 994-996. *See* also *Simić* Appeal Judgment, para. 114. The police were responsible for arrests and detention, and while Simić did not have authority over the police, his position of President of the Crisis Staff gave him strong influence. *Simić* Appeal Judgment, para. 114, *citing Simić et al.* Trial Judgment, paras 994, 995.

1189 *Simić* Appeal Judgment, para. 110 (internal alterations omitted).

1190 *Simić* Appeal Judgment, para. 114 (emphasis added).

1191 *Simić* Appeal Judgment, para. 116.

1192 *Simić* Appeal Judgment, para. 116 ("The Appeals Chamber finds that a reasonable trier of fact would be satisfied beyond reasonable doubt that the fact that the Appellant, as President of the Crisis Staff, worked together with the police, paramilitaries, and JNA to maintain the system of arrests and detention of non-Serb civilians, and that he had an important influence on the unlawful arrests and detention, show that the Appellant lent substantial assistance to the perpetration of these underlying acts of persecutions. This conclusion is corroborated by the fact that the Appellant did not heed his responsibility, as the President of the Crisis Staff, to ensure the safety of the population in Bosanski Samac Municipality, which responsibility the Appellant does not dispute as such.").

1193 Like other tribunals (*see infra* paras 417, 417 (and citations therein)), in reviewing the Post-Second World War caselaw as indicative of customary international law, the Appeals Chamber has carefully and thoroughly considered the applicable legal instruments (in particular the London Charter, Control Council Law No. 10 and the British Royal Warrant), the tribunals' holdings and articulations of law (including statements by Judge Advocates before British tribunals), and, as importantly, the tribunals' findings of fact, application of the law to the facts and ultimate conclusions. The Appeals Chamber is cognisant that "[f]or a correct appraisal of this case law, it is important to bear in mind, with each of the cases to be examined, the forum in which the case was heard, as well as the law applied, as these factors determine its authoritative value." *Furundžija* Trial Judgment, para. 194. At the same time, the Appeals Chamber firmly rejects facile characterisations of the holdings in this caselaw, as well as any suggestion that this jurisprudence is irrelevant to identifying the *actus reus* and *mens rea* elements of individual criminal liability under Article 6(1) of the Statute and customary international law. In the discussion of this caselaw and the accompanying footnotes in this Section of the Judgment, the Appeals Chamber has set out holdings of law and findings on liability from the post-Second World War caselaw that have informed this Appeals Chamber's analysis. In summary, the Appeals Chamber recalls the object and purpose of the Statute (*supra* paras 350, 351), and notes the Moscow Declaration: Statement on Atrocities and the London Agreement, pursuant to which the IMT Charter and Control Council Law No. 10 were enacted. In the Appeals Chamber's view, the object and purpose of the Statute is similar to the object and purpose of the IMT Charter and Control Council Law No. 10. The Appeals Chamber is satisfied that Article 6(1) of the Statute is substantially consonant with Article II(2)(a) to (d) of Control Council Law No. 10, *as applied by tribunals operating under that law*. More specifically, in this Chamber's view liability for "otherwise aiding and abetting in the planning, preparation or execution of a crime" under Article 6(1) of the Statute generally corresponds to individual criminal liability under Article II(2)(b) to (d) of Control Council Law No. 10, *again as applied by the tribunals*. The Appeals Chamber notes that tribunals applying Article II(2) often did not differentiate between the forms of criminal participation provided for in subsections (b) to (d) in their holdings and conclusions on guilt. *See e.g.*, *Ministries* Case, pp 337, 436, 475, 478; *Justice* Case, pp 985, 1063, 1118, 1128, 1132; *Einsatzgruppen* Case, p. 539; *Pohl* Case, pp 962, 965. In other instances, tribunals applying that law found the accused liable as accomplices or participants in the organised and systematic commission of crimes on a widespread scale, without specifying a particular subsection of Article II(2). *See, e.g.*, *Flick* Case, p. 1217; *Farben* Case, pp 1141, 1142, 1155; *Einsatzgruppen* Case p. 569; *Roechling* Appeal Judgment, p. 1123. British military tribunals described the liability of those who did not perform the *actus reus* of the crime in terms of "aiding and abetting", being an "accessory" to and/or "being concerned in" the commission of the crime. *See, e.g.*, *Schonfeld* Case; *Rhode* Case; *Almelo* Trial; *Stalag Luft III* Case; *Zyklon B* Case. Having reviewed the caselaw, the Appeals Chamber concludes that the tribunals applying the IMT Charter and Control Council Law No. 10, as well as the British tribunals applying the Royal Warrant, found that individual criminal liability was established by an accused's knowing participation in and substantial effect on the commission of the crimes charged. *Accord Furundžija* Trial Judgment, paras 235, 245; *Tadić* Trial Judgment, para. 692. For the reasons stated in this Section of the Judgment, the Appeals Chamber is satisfied that this articulation of the law of individual criminal liability is fully in accordance with the holdings of this Appeals Chamber and the Appeals Chambers of other international tribunals applying customary international law. The Appeals Chamber is further satisfied that the cases cited and discussed *applied* aiding and abetting liability by holding accused liable only for their own acts and conduct, and not common purpose or enterprise liability, although reference was made in some reasoning to criminal plans and programs *as a matter of fact*. The Appeals Chamber notes that the tribunals acquitted some accused on the merits of common purpose charges and were acquitted of individual criminal liability for crimes committed pursuant to a

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common plan. Furthermore, in a number of instances the tribunals explicitly found that accused did not directly intend that the crimes be committed and did not share the common purpose that the crimes be committed. The Appeals Chamber does not accept that this caselaw supports the position that joint criminal enterprise liability extends to all those who knowingly, without sharing the common purpose, participate in the implementation of *any* plan or enterprise to commit crimes. Further, the holdings of law and conclusions on liability discussed are distinct from and do not relate to any charges under Article II(1)(d) or (2)(e), which the Appeals Chamber emphasises are not the law of the Special Court. Finally, the Appeals Chamber endorses the view of Judge Meron: "I hesitate to repeat the commonly used term 'victors' court' because this would imply an arbitrary, perhaps unjust tribunal. . . . Nuremberg was neither arbitrary nor unjust. It tempered the Charter's harsh rules to protect the accused, it assessed the evidence according to accepted and fair legal standards, and was even ready to acquit outright some defendants. . . . That victors sat in judgment did not corrupt the essential fairness of the proceedings." T. Meron, War Crimes Law Comes of Age, pg. 198. The Appeals Chamber notes the *numerous* acquittals entered by the IMT and NMTs in particular, as well as other post-Second World War tribunals, ranging from senior officials of the Nazi Third Reich, to business and industrial leaders, to mid-level officials, to low-ranking soldiers and bureaucrats. The Appeals Chamber also notes that the IMT did not find that German organisations and groups were "criminal organisations", with the exception of the S.S., that the NMTs consistently articulated and applied the principle of personal culpability in the context of organisations, companies and other collectives and that the tribunals applying Control Council Law No. 10 applied Article II(2)(e) strictly by requiring proof of the accused's high-ranking membership, knowledge and positive acts.

1194 *Becker, Weber and 18 Others* Case, pp 67, 70. The accused participated in the illegal arrest and deportation of the victims to Germany, where three of the victims then died as a result of ill-treatment, and were thus convicted as accomplices to those deaths. The Commentary noted that the Prosecution "apparently demonstrated that the accused had caused the victims' death by contributing to and making possible their deportation to Germany, where they died from further ill-treatment committed by other individuals. Theirs was, thus, the guilt of accomplices . . . ."

1195 *Roechling* Appeal Judgment, p. 1136 (emphasis added). *See* also *Roechling* Appeal Judgment, p. 1123 ("Ernst Roechling's role in the operation of the so-called Lorsar purchasing office is of decisive importance, for he was the delegated administrator of this company. Its criminal character was discussed in connection with the statements on the acts with which Hermann Roechling was charged. Thus, Ernst Roechling is an accessory to the war crimes proved against Hermann Roechling."). *Compare Roechling* Appeal Judgment, pp 1124, 1125 ("Von Gemmingen-Hornberg, Hermann Roechling's son-in-law and president of the Directorate of the Roechling Stahlwerke in Voelklingen does not, according to the evidence of the case, appear to be guilty as an accessory or accomplice of Hermann Roechling, of the criminal acts of an economic nature. In fact, there can be no question of his personal responsibility as a result of specific action; it is not permissible under criminal law to deduce his responsibility solely from the office which he held. Accordingly, the contested judgment must, in this respect, be wholly and completely confirmed.") (*consistent with Farben* Case, p. 1142).

1196 *Ministries* Case, pp 547, 548 (emphasis added). *See* also *Ministries* Case, p. 337 (reviewing Article II(2) of Control Council Law No. 10 and concluding "[t]herefore, all those who were either principals or accessories before or after the fact, are criminally responsible, although the degree of criminal responsibility may vary in accordance with the nature of his acts."), 475 ("All those who implemented, aided, assisted, or consciously participated in these things bear part of the responsibility for the criminal program.").

1197 *Flick* Case, p. 1217 (emphasis added).

1198 *Flick* Case, p. 1221 (emphasis added).

1199 *Justice* Case, p. 1063 (emphasis added). The accused Barnickel, Petersen, Nebelung and Cuhorst were acquitted of the charges. *Justice* Case, pp 1156, 1157. As to Cuhorst, the Tribunal found: "As to count three the problem is considerably more complicated. There are many affidavits and much testimony in the record as to the defendant's character as a fanatical Nazi and a ruthless judge. There is also much evidence as to the arbitrary, unfair, and unjudicial manner in which he conducted his trials. Some of the evidence against him was weakened on cross-examination, but the general picture given of him as such a judge is one which the Tribunal accepts. . . . [However], [t]his Tribunal does not consider itself commissioned to try the conscience of a man or to condemn a man merely for a course of conduct foreign to its own conception of the law, it is limited to the evidence before if as to the commission of certain alleged offenses. Upon the evidence before it, it is the judgment of this Tribunal that the defendant Cuhorst has not been proved guilty beyond a reasonable doubt of the crimes alleged and that he be, therefore, acquitted on the charges against him."

1200 The different programs were charged as the particulars of Counts 2 and 3; findings on liability were made with respect to the particulars, although convictions were entered on the counts charged. *See Justice* Case, pp 985, 1055 ("The foregoing documents and the undisputed facts show that Hitler and the high ranking officials of the armed forces and of the Nazi Party, including several Reich Ministers of Justice and other high officials in the Ministry of Justice, judges of the Nazi regime's courts, the public prosecutors at such courts, either agreed upon, consented to, took a consenting part in, ordered, or abetted, were connected with the Hitler NN plan, scheme, or enterprise involving the commission of war crimes and crimes against humanity during the waging of the recent war against the Allied nations and other neighboring nations of Germany.").

1201 *See, e.g.*, *Justice* Case, p. 1081 ("The evidence conclusively establishes the adoption and application of systematic government-organized and approved procedures amounting to atrocities and offenses of the kind made punishable by C.C. Law 10 and committed against 'populations' and amounting to persecution on racial grounds. . . . The pattern and plan of racial persecution has been made clear. General knowledge of the broad outlines thereof in all its immensity has been brought home to the defendants. The remaining question is whether or not the evidence proves beyond a reasonable doubt in the case of the individual defendants that they each consciously participated in the plan or took a consenting part therein.")

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1202 "The defendant Rothenberger is guilty of taking a minor but consenting part in the Night and Fog program. He aided and abetted in the program of racial persecution . . . ." *Justice* Case, p. 1118. "[Lautz] was an accessory to, and took a consenting part in, the crime of genocide." *Justice* Case, p. 1128. "We find defendant Mettgenberg to be guilty under counts two and three of the indictment. The evidence shows beyond a reasonable doubt that he acted as a principal, aided, abetted, and was connected with the execution and carrying out of the Hitler Night and Fog decree . . . ." *Justice* Case, p. 1132.

1203 *Farben* Case, p. 1142 ("We have used the term 'Farben' as descriptive of the instrumentality of cohesion in the name of which the enumerated acts of spoliation were committed. But corporations act through individuals and, under the conception of personal individual guilt to which previous reference has been made, the prosecution, to discharge the burden imposed upon it in this case, must establish by competent proof beyond a reasonable doubt that an individual defendant was either a participant in the illegal act or that, being aware thereof, he authorized or approved it. Responsibility does not automatically attach to an act proved to be criminal merely by virtue of a defendant's membership in the Vorstand. Conversely, one may not utilize the corporate structure to achieve an immunity from criminal responsibility for illegal acts which he directs, counsels, aids, orders, or abets.").

1204 Taylor Appeal, paras 453, 456; Taylor Reply, para. 71; Appeal transcript, 22 January 2013, pp 49903, 49918.

1205 *Sesay et al.* Appeal Judgment, paras 312-319, 475.

1206 *Brđanin* Appeal Judgment, para. 431.

1207 *See supra* para. 362.

1208 Statute, Art. 6(1); ICTY Statute, Art. 7(1); ICTR Statute, Art. 6(1); Rome Statute, Art. 25(3); Genocide Convention, Art. 3; Torture Convention, Art. 4(1); Nuremberg Principles, Principle VII. *Accord Furundžija* Trial Judgment, para. 235, *adopted by Blaškić* Appeal Judgment, para. 46; *Aleksovski* Appeal Judgment, para. 170 ("But Article 7(1) deals not only with individual responsibility by way of direct or personal participation in the criminal act but also with individual participation by way of aiding and abetting in the criminal acts of others."); *Blagojević and Jokić* Appeal Judgment, para. 192; STL Decision on Applicable Law, para. 225. *See* also ILC 1996 Draft Code, Art. 2(3); Secretary-General's Report on the ICTY, para. 54 ("The Secretary-General believes that all persons who participate in the planning, preparation or execution of serious violations of international humanitarian law in the former Yugoslavia contribute to the commission of the violation and are, therefore, individually responsible.").

1209 *See Sesay et al.* Appeal Judgment, Separate and Concurring Opinion of Justice Ayoola, para. 9, *quoting Kupreškić et al.* Trial Judgment, para. 543.

1210 *See Tadić* Appeal Judgment, para. 191 ("Most of the time these crimes do not result from the criminal propensity of single individuals but constitute manifestations of collective criminality.").

1211 *See Brima et al.* Appeal Judgment, paras 277-285.

1212 *See Brđanin* Appeal Judgment, paras 235, 236. Brđanin was held liable for aiding and abetting crimes that were committed on a large-scale in the implementation of the Strategic Plan of the Bosnian Serb leadership. Krstić, Blagojević and Jokić aided and abetted widespread and systematic crimes committed in furtherance of the common criminal purpose of a plurality of persons.

1213 In *Blagojević and Jokić*, the Trial Chamber found a plurality of persons sharing a common purpose to commit forcible transfer and persecution, but considered that neither accused shared the intent of those crimes and that both accused's participation in the crimes was more properly described as aiding and abetting. *Blagojević and Jokić* Trial Judgment, paras 704-714 (Blagojević), 715-725 (Jokić). In *Krstić*, the Trial Chamber found, and the Appeals Chamber confirmed, a plurality of persons sharing a common purpose to commit genocide. The Appeals Chamber concluded that Krstić did not share the common purpose, but entered convictions for aiding and abetting the crimes that were committed in furtherance of the common purpose, as Krstić had a substantial effect on the commission of those crimes. *Krstić* Appeal Judgment, paras 79-137. In *Simić et al.*, the Trial Chamber found a plurality of persons sharing a common purpose to commit crimes, and convicted the accused Zarić and Tadić for aiding and abetting crimes committed in furtherance of that common purpose, although it found that neither shared the common criminal purpose. It also convicted Simić as a participant in that joint criminal enterprise. On appeal, the Appeals Chamber reversed that conviction as defectively pleaded, finding that Simić did not have notice that he was being charged with commission through JCE. The Appeals Chamber then convicted Simić for aiding and abetting crimes. While it did not expressly take into consideration the Trial Chamber's finding that there was a plurality of persons sharing a common purpose to commit crimes, it accepted and relied on the factual findings underlying the Trial Chamber's conclusion. *See Simić* Appeal Judgment, paras 15-74 (pleading of JCE), 92-95. The *Brima et al.* Trial Chamber did not make findings on the existence of a plurality of persons sharing a common purpose to commit crimes, as it found, like the ICTY Appeals Chamber in *Simić*, that JCE was defectively pleaded. *Brima et al.* Trial Judgment, paras 66-85.

1214 *Ministries* Case, pp 435, 436 ("The Tribunal is of the opinion that no evidence has been offered to substantiate a conviction of the defendants in a common plan and conspiracy, and all the defendants charged therein are hereby acquitted."). Accused were convicted for aiding and abetting the crimes. *See* further *infra* paras 423, 424 (and citations therein).

1215 *Hostage* Case, pp 1260, 1261.

1216 *See Tadić* Trial Judgment, para. 677 ("The tribunal saw as essential proof that he had knowledge of others' acts that were done in furtherance of the *Nacht und Nebel* plan, as well as evidence of deliberate action. However, it did not require proof that Joel was party to a prior arrangement or agreement to take part in any particular behaviour."). In convicting Lautz, the Tribunal found "There is much to be said in mitigation of punishment. Lautz was not active in Party matters. He resisted all efforts of Party officials to influence his conduct but yielded to influence and guidance from Hitler through the Reich Ministry of Justice, believing that to be required under German law. He was a stern man and a relentless prosecutor, but it may be said in his favor that if German law were a defense, which it is not, many of his acts would be excusable." *Justice* Case, p. 1128. In convicting Schlegelberger, the Tribunal stated: "We are under no misapprehension. Schlegelberger is a tragic character. He loved the life of an intellect, the work of the scholar. We believe that he loathed the evil that he did, but

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he sold that intellect and that scholarship to Hitler for a mess of political pottage and for the vain hope of personal security. He is guilty under counts two and three of the indictment." *Justice* Case, p. 1087. In comparison, the Tribunal found regarding Klemm: "When Rothenberger was ousted as State Secretary because he was not brutal enough, it was Klemm who was chosen to carry on the Thierack program in closest cooperation with the heads of the Nazi conspiracy. Klemm was in the inner circle of the Nazi war criminals. He must share with his dead friend, Thierack, (with whom he had lived), and his missing friend, Bormann, the responsibility, at a high policy level, for the crimes committed in the name of justice which fill the pages of this record. We find no evidence warranting mitigation of his punishment." *Justice* Case, p. 1094. *But see* Separate Opinion of Judge Blair, pp 1195-1199 (suggesting that aiding and abetting a plan makes one a co-conspirator in the plan and liable for all crimes in accordance with the conspiracy).

1217 For example, Jokić was acquitted of aiding and abetting some murders committed pursuant to a common purpose on the ground that either the *actus reus* or *mens rea* of aiding and abetting liability was not established. *See Blagojević and Jokić* Trial Judgment, paras 762, 765. *See* also *Blagojević and Jokić* Trial Judgment, para. 774. Krstić was found to have had a substantial effect on all crimes of genocide, extermination, persecution and murder committed pursuant to the common purpose. While the Trial Chamber in *Brđanin* did not find a plurality of persons sharing a common criminal purpose on legal grounds (*Brđanin* Trial Judgment, para. 345), it is notable that the Trial Chamber acquitted Brđanin of crimes it was satisfied were committed in the ARK in the implementation of the Strategic Plan. *See Brđanin* Trial Judgment, paras 159 (camps in implementation of Strategic Plan), 538, fn. 1375 (Brđanin not found guilty of killings committed in camps as he did not have knowledge of such killings). In the *Ministries* Case, Von Weizsaecker was acquitted of crimes committed in the implementation of the "Final Solution".

1218 In some trials held before United States military courts, the Prosecution charged that the accused "acted in pursuance of a common design to commit" certain crimes. *See, e.g.*, *Dachau* Case; *Hadamar* Case ("acting in pursuance of a common interest"); *Flossenburg* Case (the Prosecution submitted that "each of the accused was capable of and did entertain the common intent or design to subject the inmates of Flossenburg to beatings, killings, tortures, starvation, and other indignities."); *Mauthausen* Case. In the *Belsen* Case, the Judge Advocate stated that: "The case for the Prosecution was that all the accused employed on the staff at Auschwitz knew that a system and a course of conduct was in force, and that, in one way or another in furtherance of a common agreement to run the camp in a brutal way, all those people were taking part in that course of conduct.").

1219 Taylor Appeal, Grounds 14, 16, 19, and 21. *See* generally, Taylor Appeal, para. 317. *See* also Appeal transcript, 22 and 23 January 2013.

1220 Taylor Appeal, paras 448, 449, 459; Appeal transcript, 22 January 2013, p. 49913.

1221 Taylor Appeal, paras 457, 458, 459. *See* also Taylor Appeal, para. 361.

1222 Taylor Appeal, paras 455, 456, 459.

1223 *Sesay et al.* Appeal Judgment, para. 312, *quoting Brima et al.* Appeal Judgment, para. 72.

1224 *See Sesay et al.* Appeal Judgment, paras 312-319.

1225 Taylor Appeal, para. 448.

1226 Taylor Appeal, para. 448, 449; Appeal transcript, 22 January 2013, p. 49913.

1227 Taylor Appeal, para. 459.

1228 Prosecution Response, paras 397, 398.

1229 *Sesay et al.* Appeal Judgment, para. 312; *Brima et al.* Appeal Judgment, para. 72, *quoting Tadić* Appeal Judgment, para. 186. *See* also *Deronjić* Sentencing Appeal, para. 124; *Brđanin* Appeal Judgment, Partly Dissenting Opinion of Judge Shahabuddeen, para. 3; *Čelibići* Appeal Judgment, Separate and Dissenting Opinion of Judges Hunt and Bennouna, para. 27.

1230 *See supra* paras 362-385.

1231 *See, e.g.*, *Ministries* Case, pp 499, 507, 528, 577, 578, 631, 694; *Pohl* Case, pp 1001, 1002, 1004; *Farben* Case, p. 1153, 1157, 1158; *Roechling* Appeal Judgment, pp 1124, 1125; IMT Judgment, p. 284 ("There is evidence showing the participation of the Party Chancellery, under Hess, in the distribution of orders connected with the commission of War Crimes; that Hess may have had knowledge of, even if he did not participate in, the crimes that were being committed in the East, and proposed laws discriminating against Jews and Poles; and that he signed decrees forcing certain groups of Poles to accept German citizenship. The Tribunal, however, does not find that the evidence sufficiently connects Hess with those crimes to sustain a finding of guilt."); *Zyklon B* Case, para. 9; *Einsatzgruppen* Case, p. 581 (Ruehl was not in "a position where his lack of objection in any way contributed to the success of any executive operation."); *Simić et al.* Trial Judgment, paras 999 ("While Miroslav Tadić had knowledge of the discriminatory intent of the joint criminal enterprise, *the actions or omissions of Miroslav Tadić cannot be considered to have had a substantial effect on the perpetration of the offence of unlawful arrests and detention, and as such did not aid and abet the joint criminal enterprise*.") (emphasis added), 1000 (The Trial Chamber was "not satisfied that Simo Zarić aided and abetted the joint criminal enterprise to commit acts of unlawful arrest or detention as persecution. In his position as Assistant Commander for Intelligence, Reconnaissance, Morale and Information in the 4th Detachment, he was responsible for conducting interrogations of some detainees at the SUP and in Brčko. The Trial Chamber *does not find that these acts gave substantial assistance to the commission of acts of unlawful arrest, detention and confinement of non-Serbs*, committed by the joint criminal enterprise.") (emphasis added); *Blagojević and Jokić* Trial Judgment, para. 774 (In relation to Dragan Jokić's responsibility for aiding and abetting persecution, the Trial Chamber found that "no evidence has been presented which would enable it to conclude that Dragan Jokić rendered practical assistance, encouragement or moral support, which had a substantial effect on the cruel and inhumane treatment or the terrorising of the civilian population. The Trial Chamber therefore concludes that Dragan Jokić does not bear any liability for these underlying acts.").

1232 *See, e.g.*, *Fofana and Kondewa* Appeal Judgment, paras 97, 102 (in respect of the Prosecution's appeal against acquittal at trial (para. 99), holding that the fact that the accused provided arms, ammunition and a vehicle to support a military attack is not sufficient to eliminate all reasonable doubt as to whether the accused's acts and

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conduct had a substantial effect on crimes that were later committed).

1233 *See Furundžija* Trial Judgment, para. 233 ("Having a role in a system without influence would not be enough to attract criminal responsibility.") (and cases discussed therein).

1234 Taylor Appeal, paras 457, 458. *See* also Taylor Appeal, para. 361, *citing* German Federal Court of Justice (BGH), Case No. 4 StR 453/00, Judgement of 8 March 2001, p. 10 (Germany).

1235 Taylor Appeal, para. 459.

1236 Prosecution Response, para. 405.

1237 Prosecution Response, para. 406.

1238 The Defence contrasts the law articulated by the Trial Chamber for aiding and abetting liability with the law for ordering and instigating liability, submitting that the key distinction is that ordering and instigating both involve acts that in themselves reflect a criminal objective, while aiding and abetting liability involves acts of assistance that are not intrinsically criminal. Appeal transcript, 22 January 2013, pp 49897, 49899. The Appeals Chamber does not accept the Defence submission, which has no basis in law. The acts and conduct constituting the *actus reus* of planning, instigating, ordering and aiding and abetting liability may take a variety of forms, whether innocuous or apparently criminal. The Appeals Chamber agrees with the Trial Chamber that ordering liability is incurred when the accused ordered an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that order. *Accord Nahimana et al.* Appeal Judgment, para. 481; *Galić* Appeal Judgment, paras 152, 157; *Kordić and Čerkez* Appeal Judgment, para. 30; *Blaškić* Appeal Judgment, para. 42. *See* also Trial Judgment, para. 474; *Milutinović et al.* Trial Judgment, para. 85. As the ICTY Appeals Chamber held, "an order does not necessarily need to be explicit in relation to the consequences it will have." *D. Milošević* Appeal Judgment, para. 267. Likewise, as the Trial Chamber correctly stated for instigating liability, "[t]he accused need only prompt another to 'act in a particular way'-and not necessarily to commit a crime or underlying offence." Trial Judgment, para. 471, fn. 1109. In conjunction with the requirement that the accused's acts and conduct must have a substantial effect on the commission of the crime, the Appeals Chamber accepts the Trial Chamber's formulation as an accurate statement of the *actus reus* of instigating liability and adopts it. *See* also *Kordić and Čerkez* Appeal Judgment, paras 27, 32; *Milutinović et al.* Trial Judgment, para. 83; *Kvočka et al.* Trial Judgment, para. 252.

1239 Trial Judgment, paras 6914, 6949.

1240 Taylor Appeal, paras 455, 456, 459.

1241 Taylor Appeal, paras 456, 459.

1242 Prosecution Response, para. 404.

1243 Prosecution Response, para. 404.

1244 Prosecution Response, para. 404.

1245 Trial Judgment, para. 6788.

1246 Trial Judgment, paras 558, 559.

1247 Trial Judgment, paras 6790, 6793, 6905.

1248 *See supra* paras 253-302. The Trial Judgment is further replete with findings regarding Taylor's acts and conduct and knowledge. The Trial Chamber only entered convictions once it was satisfied that the *actus reus* and *mens rea* elements of aiding and abetting and planning liability were proved beyond a reasonable doubt.

1249 Trial Judgment, para. 486.

1250 Trial Judgment, para. 487.

1251 Taylor Notice of Appeal, Ground 18.

1252 Taylor Appeal, para. 318, fn. 641.

1253 Taylor Appeal, paras 327-367.

1254 Taylor Appeal, para. 319.

1255 Taylor Appeal, paras 338-346. The Defence emphasises that "[t]he salient issue, it must be recalled, is not whether Article 25(3)(c) declares customary international law; the issue, rather, is whether there is any evidence to justify the Chamber's pronouncement that the knowledge standard reflected customary international law as of the date of the alleged criminal activity." Taylor Appeal, para. 339.

1256 Taylor Appeal, para. 348.

1257 Taylor Appeal, paras 350-357, *discussing* the ILC 1996 Draft Code of Crimes (para. 347), Art. 25(3)(c) of the Rome Statute (para. 351) and the post-Second World War military tribunals' jurisprudence (paras 352, 353).

1258 Taylor Appeal, paras 352, 353, *citing Einsatzgruppen, Zyklon B, Schonfeld, Hechingen* and *Ministries* cases.

1259 Taylor Appeal, paras 360-364.

1260 Taylor Appeal, paras 361-364, *citing* German Federal Court of Justice (BGH), Case No. 4 StR 453/00, Judgement of 8 March 2001, p. 10 (Germany); Stefani, G. *et al*., *Droit pénal général*, Dalloz (Paris, 2000), p. 290 (France); Cass. pen., sez. VI 12-06-2003 (21-03-2003), n. 25705 (Italy); Rejman Genowefa (ed.) *Kodeks karny część ogólna—Komentarz*, Wydawnictwo C.H. Beck (Warszawa 1999) (Poland); United States Model Penal Code, § 2.06(4) and *United States v. Peoni*, 100 F.2d 401, 402 (2nd Cir 1938) (United States); Criminal Code, R.S.C. 1985, c. C-46, s. 21(b) (Canada); *Gillick v. West Norfolk and Wisbech A.H.A.*, [1986] AC 112 (England); *R. v. Lam Kit*, [1988] 1 HKC 679, 680 and *R. v. Leung Tak-yin* [1987] 2 HKC 250 (Hong Kong) and Yeo, S., "India", in Heller, K. and Dubber, M., eds. *The Handbook of Comparative Criminal Law*, Stanford University Press (Stanford: 2011), p. 296, citing *Mohd Jamal v. Emperor*, A.I.R. 1953 All 668 (India).

1261 Taylor Appeal, para. 365.

1262 Prosecution Reponse, paras 282-290, *discussing* the United Nations General Assembly "Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal", the UNWCC Report XV, p. xvi., *Flick* Case, *Roechling* Case, *Einsatzgruppen* Case, *Furundžija* Trial Judgment, *Ministries* Case, *Tadić* Trial Judgment.

1263 Prosecution Reponse, paras 300-305.

1264 Prosecution Reponse, para. 301, *citing Orić* Appeal Judgment, Judge Shomburg Opinion, para. 20, *Exxon Mobil*, p. 42.

1265 Prosecution Reponse, para. 302.

1266 Prosecution Reponse, para. 303.

1267 Prosecution Reponse, paras 303, 304.

1268 Taylor Reply, para. 46, *discussing Roechling* and *Ministries* Cases.

1269 Taylor Reply, para. 50.

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1270 Taylor Appeal, paras 368-376. *See* also Taylor Appeal, para. 385.

1271 Taylor Appeal, paras 369-372, *citing Haradinaj* Appeal Judgment, para. 58, *Vasiljević* Appeal Judgment, para. 102, *Blaskic* Appeal Judgment, para. 49.

1272 Prosecution Reponse, para. 306.

1273 Prosecution Response, para. 313.

1274 Prosecution Response, para. 313.

1275 Taylor Appeal, para 395.

1276 Taylor Appeal, paras 394-396. *See* also Taylor Appeal, para. 441.

1277 Prosecution Response, para. 319 (emphasis added).

1278 Taylor Reply, paras 55-58.

1279 Taylor Appeal, para. 348.

1280 Taylor Appeal, para. 337.

1281 *See*, *e.g.*, *Sesay et al.* Appeal Judgment, para. 546; *Brima et al.* Appeal Judgment, paras 242, 243; *Fofana and Kondewa* Appeal Judgment, para. 366.

1282 *See Tadić* Appeal Judgment, para. 229(iv); *Aleksovski* Appeal Judgment, para. 163; *Vasiljevic* Appeal Judgment para. 102; *Krnojelac* Appeal Judgment, paras 33, 51; *Blaskic* Appeal Judgment, para. 49 (affirming *Vasiljevic* Appeal Judgment definition that *mens rea* of aiding and abetting does not require anything more than "knowledge on the part of the aider and abettor that his acts assist in the commission of the principal perpetrator's crime"); *Simić* Appeal Judgment, para. 86; *Brđanin* Appeal Judgment, para. 484; *Blagojević and Jokić* Appeal Judgment, para. 127 (reiterating that "[t]he requisite mental element of aiding and abetting is knowledge that the acts performed assist the commission of the specific crime of the principal perpetrator"); *Orić* Appeal Judgment, para. 43; *Mrksić* and *Šljivančanin* Appeal Judgment, paras 49, 159; *Haradinaj et al.* Appeal Judgment, para. 58; *Lukić and Lukić* Appeal Judgment, para. 428.

1283 *See Ntagerura et al.* Appeal Judgment, para. 370; *Nahimana et al.* Appeal Judgment, para. 482; *Rukundo* Appeal Judgment, para. 53; *Ntawukulilyayo* Appeal Judgment, para. 222; *Kalimanzira* Appeal Judgment, para. 86; *Karera* Appeal Judgment, para. 321; *Muvunyi* Appeal Judgment, para. 79; *Seromba* Appeal Judgment, para. 56.

1284 *Brima et al.* Appeal Judgment, para. 242, *quoting Brima et al.* Trial Judgment, para. 776. *See* also *Sesay et al.* Appeal Judgment, para. 546; *Fofana and Kondewa* Appeal Judgment, paras 366-367. Subsequently, the STL Appeals Chamber and an ECCC Trial Chamber articulated similar *mens rea* standards for aiding and abetting. *See* STL Applicable Law Decision, para. 227 ("[t]he *subjective element* of aiding and abetting resides in the accessory having *knowledge* that 'his actions will assist the perpetrator in the commission of the crime.'") (emphasis in original); *Duch* Trial Judgment, para. 535 ("[l]iability for aiding and abetting a crime requires proof that the accused knew that a crime would probably be committed, that the crime was in fact committed, and that the accused was aware that his conduct assisted the commission of that crime. This knowledge can be inferred from the circumstances.")

1285 *Mens rea* relates, *inter alia*, to the conduct, the consequence and the context or factual circumstances forming part of the crime. The Appeals Chamber notes that certain civil law jurisdictions conceptualise *mens rea* as comprising a cognitive ("knowledge", "rappresentazione", "*Wissen*") and a volitional component ("intention", "volonta", "*Wiele*"). The Appeals Chamber further notes that Article 30(1) of the Rome Statute provides: "Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with *intent* and *knowledge*." (emphasis added). For a detailed comparative discussion of the subjective element in domestic legal systems and international criminal law, see E. van Sliedregt, Individual Criminal Responsibility in International Law.

1286 The Appeals Chamber notes the Trial Chamber's holding, consistent with the jurisprudence of other international tribunals, that for specific-intent crimes or underlying offences such as persecution as a crime against humanity, aiding and abetting liability can attach even where an accused does not have the requisite specific intent. The Defence does not challenge this holding, nor does it challenge in this regard Taylor's convictions for acts of terror under Count 1. As the Parties have not raised the issue, the Appeals Chamber does not address it. In respect of this issue, see, *inter alia*, *R. v. Woollin*, [1999] AC 82; G. Williams, *Oblique Intention*; J. Stewart, *The End of Modes of Liability*; *Hechingen* Case (the Appeals Court acquitted the accused of aiding and abetting persecutions because the accused did not have the specific intent for the crime, noting that Control Council Law No. 10 established personal culpability for the crime); Greenawalt, *Rethinking Genocidal Intent: The Case for a Knowledge-based Interpretation*; K. Ambos, *Some Preliminary Reflections on the Mens rea Requirements of the Crimes of the ICC Statute and of the Elements of Crimes*.

1287 Trial Judgment, para. 6949.

1288 *See* Appeal transcript, 22 January 2013, pp 49919, 49920 ("So what is purpose, at least as it is applied in some systems? Well, purpose in some systems is defined as intent to assist a crime. The intention to assist a crime, that's not the same as direct intent in respect of the crime of the perpetrator. It is *dolus directus* in respect of the assistance, not in respect of the ultimate crime. Now, whether or not those two might be very hard to distinguish in any particular case is not for me to say. There may be cases indeed where they are different, but in terms of topology, it's very clear what 'purpose' means. 'Purpose' means intent to assist.").

1289 The Appeals Chamber has noted in its review of the jurisprudence, legal sources and the Parties' submissions that a variety of terminology is used to describe the standards for an accused's mental state regarding the consequence of his acts and conduct, as a component of *mens rea*. Jurisprudence on *mens rea* under customary international law recognises and discusses three such standards: direct intent, knowledge and awareness of the substantial likelihood. Collectively, these standards may be described as "*dolus*" or "*Wille*", and the ICRC has persuasively commented that these three standards are incorporated in the term "wilfully" as used in some international instruments. *See* ICRC Commentary, Additional Protocol I, para. 3474. The Appeals Chamber adopts the term "*dolus*" to describe the mental state regarding the consequence of acts or conduct that is generally required in customary international law. The Appeals Chamber uses the term "direct intent"—also described as "purpose", "*dol general*", "*dolo intenzionale*" and "*dolus directus* in the first degree"—to describe an accused's "will", "desire" or "conscious object" that his acts

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or conduct have an effect on the commission of a crime. This is the standard put forward by the Defence for aiding and abetting liability. The Appeals Chamber uses the term "knowledge"—also described as "general intent", "*dol special*", "*dolo diretto*" and "*dolus directus* in the second degree"—to describe the accused's knowledge that his acts or conduct have an effect on the commission of the crime. This is a standard articulated in this Court's jurisprudence, applied by the Trial Chamber here and the subject of the Defence's primary challenge. The Appeals Chamber uses the term "awareness of the substantial likelihood"—which *generally* corresponds to terms such as "conditional intent", "advertent recklessness", "indirect intent", "*bedingte Vorsatz*" and "*dolus eventualis*"—to describe an accused's awareness and acceptance of the substantial likelihood that his acts or conduct have an effect on the commission of the crime. This is a standard articulated in this Court's jurisprudence and the subject of the Defence's second challenge. These standards are framed as appropriate for aiding and abetting liability. Recalling that the issue is an accused's mental state in relation to the consequence of his acts or conduct, which in turn relates to the relevant *actus reus*, for commission liability the consequence of an accused's acts or conduct is to *commit* the crime. For planning, instigating, ordering and aiding and abetting liability, the consequence of the accused's acts or conduct is to *have an effect* on the commission of the crime. *See* further, U.S. Model Penal Code (MPC), section 2.02; J.S. Bell, Principles of French Law; G. Marinucci—E. Dolcini, Manuale di Diritto Penale, Parte Generale, pp. 188-191; E. van Sliedregt, Individual Criminal Responsibility in International Law, pp. 40-41; G. Williams, *Oblique Intention*; A. Cassese, International Criminal Law, pp 60-69.

1290 At the ICTY, *see*, *e.g.*, *Tadić* Appeal Decision on Jurisdiction, paras 128, 138; *Tadić* Appeal Judgment, paras 194, 197-202, 205-220, 256-269; *Tadić* Trial Judgment, paras 661-692; *Hadžihasanović et al.* Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility; *Furundžija* Trial Judgment, paras 193-249. *See* also Secretary-General's Report on ICTY, para. 55; Taylor Appeal, paras 334-336; Prosecution Response, paras 282-286.

1291 *See, e.g.*, *Presbyterian Church of Sudan v. Talisman Energy*, 582 F.3d 244 (2nd Cir. 2009); *Khulumani v. Barclay Nat'l Bank*, 504 F.3d 254 (2nd Cir. 2007); *Doe v. Unocal*, 395 F.3d 932 (9th Cir. 2002); *In re South African Apartheid Litigation*, 617 F.Supp. 2d 228 (S.D.N.Y. 2009); *Polyukhovich v. Commonwealth*, 172 CLR 501 (1991).

1292 IMT Charter, Art. 6. The same provision can be found in Article 5 of the Charter of the International Military Tribunal for the Far East (IMTFE). The IMT held that the Charter only established conspiracy to commit aggressive war as a substantive crime; it did not accept that conspiracy to commit war crimes or crimes against humanity was a substantive crime. IMT Judgment, p. 226 ("Count One, however, charges not only the conspiracy to commit aggressive war, but also to commit War Crimes and Crimes against Humanity. But the Charter does not define as a separate crime any conspiracy except the one to commit acts of aggressive war. . . . The Tribunal will therefore disregard the charges in Count One that the defendants conspired to commit War Crimes and Crimes against Humanity, and will consider only the common plan to prepare, initiate, and wage aggressive war."). As the IMT strictly limited its application of conspiracy and common plan liability to Count One, its findings on personal liability with respect to the other counts relied on and applied accomplice liability.

1293 IMT Judgment, p. 226.

1294 IMT Judgment, p. 319.

1295 IMT Judgment, p. 330.

1296 IMT Judgment, p. 332 (emphasis added).

1297 Frick was found guilty because he "had knowledge that insane, sick, and aged people, 'useless eaters', were being systematically put to death." IMT Judgment, p. 301 ("Complaints of these murders reached him, but he did nothing to stop them. A report of the Czechoslovak War Crimes Commission estimated that 275,000 mentally deficient and aged people, for whose welfare he was responsible, fell victim to it"). Rosenberg was convicted because he "had knowledge of and took an active part in stripping the Eastern Territories of raw materials and food-stuffs, which were all sent to Germany." IMT Judgment, p. 295 ("Upon occasion Rosenberg objected to the excesses and atrocities committed by his subordinates, notably in the case of Koch, but these excesses continued and he stayed in office until the end."). In finding Donitz guilty, the IMT noted that the accused admitted "he knew of concentration camps. A man in his position must necessarily have known that citizens of occupied countries in large numbers were confined in the concentration camps." IMT Judgment, p. 314. In relation to Speer, the IMT found that "[t]he system of blocked industries played only a small part in the over-all slave labour program, although Speer urged its cooperation with the slave labour program, knowing the way in which it was actually being administered. In an official sense, he was its principal beneficiary and he constantly urged its extension." The Tribunal rejected Funk's defence of lack of knowledge on the basis that he "either knew what was being received or was deliberately closing his eyes to what was being done." IMT Judgment, p. 306. *See* also IMT Judgment, p. 336. Acquittals were entered because the evidence did not establish the requisite knowledge in relation to some defendants. IMT Judgment, pp 310, 339.

1298 The Allied Powers adopted Control Council Law No. 10, which incorporated the London Agreement and the IMT Charter, "in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders." C.C. Law No. 10, Preamble. Ordinance No. 7, implementing Control Council Law No. 10 in the U.S. Zone of Occupation, further provided that the IMT's findings that the crimes were committed were binding upon the C.C. Law No. 10 military tribunals "except insofar as the *participation* therein or *knowledge* thereof by any particular person may be concerned." Ordinance No. 7 was enacted on 18 October 1946 with the purpose "to provide for the establishment of military tribunals which shall have the power to try and punish persons charged with offenses recognized as crimes in Article II of Control Council Law No. 10." Ordinance No. 7, Article I, X (emphasis added).

1299 C.C. Law No. 10, Art. II(2): "Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime or (f) with reference

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to paragraph 1(a) if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial or economic life of any such country." The Appeals Chamber recalls that the post-Second World War jurisprudence and, in particular, the NMT judgments applied accomplice liability based on the inclusive nature of Article II of Control Council Law No. 10. *Contra* Taylor Reply, para. 46. *See supra* para. 377, fn. 1193.

1300 In the *Justice* Case, Tribunal III held that "[t]he tribunals authorized by Ordinance No. 7 are dependent upon the substantive jurisdictional provisions of C.C. Law 10 and are thus based upon international authority and retain international characteristics." *Justice* Case, p. 958. In the *Ministries* Case, the Tribunal held that "[t]his is not a tribunal of the United States of America, but is an International Military Tribunal, established and exercising jurisdiction pursuant to authority given for such establishment and jurisdiction by Control Council Law No. 10, enacted 20 December 1945 by the Control Council, the highest legislative branch of the four Allied Powers now controlling Germany." *Ministries* Case, Order, p. 325. In the *Flick* Case, Tribunal IV explained: "[a]s to the Tribunal, its nature, and competence: The Tribunal is not a court of the United States as that term is used in the Constitution of the United States. It is not a court martial. It is not a military commission. It is an international tribunal established by the International Control Council, the high legislative branch of the four Allied Powers now controlling Germany. The judges were legally appointed by the Military Governor and the later act of the President of the United States in respect to this was nothing more than a confirmation of the appointments by the Military Governor. The Tribunal administers international law. It is not bound by the general statutes of the United States or even by those parts of its Constitution which relate to courts of the United States."

1301 As international tribunals applying an international agreement for the prosecution of crimes against humanity and war crimes, the NMTs' jurisprudence is indicative of customary international law. *Accord* ECCC Appeals Decision on Joint Criminal Enterprise, para. 60 (the NMTs "offer an authoritative interpretation of their constitutive instruments and can be relied upon to determine the state of customary international law"); *Brdjanin* Appeal Judgment, paras 393 *et seq.*; *Rwamakuba* Decision on Interlocutory Appeal, para. 14 ("tribunals operating under CC Law No. 10 are indicative of principles of international law"); *Milutinović et al.* JCE Jurisdiction Decision, Separate Opinion of Judge Hunt, para. 18; *Milutinović* Decision on Indirect Co-perpetration, Separate Opinion of Judge Bonomy; *Furundžija* Trial Judgment, paras 193-195 (NMTs applied international instruments, in comparison with British Military Tribunals); *Erdemović* Separate and Dissenting Opinion of Judge Cassese, para. 27 (decided on other grounds) ("as Control Council Law No. 10 can be regarded as an international agreement among the four Occupying Powers (subsequently transformed, to a large extent, into customary law), the action of the courts established or acting under that Law acquires an international relevance."); *Doe v. Unocal* (the Court "should apply international law as developed in the decisions of international criminal tribunals such as the Nuremberg Military Tribunals for the applicable substantive law."). The French Superior Military Government Court in *Roechling* also referenced and relied on the NMTs Judgments. *Roechling* Appeal Judgment, p. 1123. *But see Polyukhovich v. Commonwealth* (Brennan J and Toohey J, in the course of discussing whether crimes against humanity were independent crimes under customary international law before 1945, noted that the IMT and NMTs had reached different conclusions on this question, based on differences in their respective charters. Both resolved the issue in favour of the IMTs conclusion that under customary international law at the relevant time, crimes against humanity required a connection with war crimes or crimes against peace. Both suggested in passing that the different conclusions could be attributed to the fact that the NMTs were arguably local courts administering municipal law. With the greatest respect to the learned Judges, a thorough review of the NMTs jurisprudence and Control Council Law No. 10 clearly demonstrates that this characterisation is unsustainable as a general statement, and the Appeals Chamber does not consider that Brennan J and Toohey J were making such a general statement.). For a detailed discussion of the NMTs, their jurisdiction and the cases before them, *see* K. J. Heller, The Nuremberg Military Tribunals and the Origins of International Criminal Law.

1302 *See infra* para. 424.

1303 *Justice* Case, p. 1093.

1304 Regarding Rothenberger, the Tribunal found that he, "contrary to his sworn testimony, must have known that the inmates of the Mauthausen concentration camp were there by reason of the 'correction of sentences' by the police, for the inmates were in the camp either without trial, or after acquittal, or after the expiration of their term of imprisonment." *Justice* Case, p. 1116. Similarly, Von Ammon was found guilty because of his "actual knowledge concerning the systematic abuse of the judicial process." *Justice* Case, p. 1134.

1305 *Justice* Case, p. 1155.

1306 *Justice* Case, p. 1094.

1307 *Justice* Case, p. 1138. In relation to Joel, the Commentary to the *Justice* case highlighted that "[i]n the second place, the Tribunal clearly regarded as important not only evidence of positive action on the part of Joel but also proof of *knowledge* of acts on the part of others which were done in furtherance of the Nacht und Nebel plan." UNWCC Law Reports, Vol. VI, p. 87 (emphasis added).

1308 UNWCC Law Reports, Vol. XV, p. 55.

1309 *Flick* Case, para. 1216, p. 26.

1310 *Flick* Case, para. 1219, p. 29.

1311 *Flick* Case, para. 1216, p. 26.

1312 *Farben* Case, p. 1137 (emphasis added). On that basis, the Tribunal concluded that "[a]s the action of Farben in proceeding to acquire permanently property interests in the manner generally outlined is in violation of the Hague Regulations, any individual who *knowingly* participated in any such act of plunder or spoliation with the degree of connection outlined in Article II, paragraph 2 of Control Council Law No. 10, is criminally responsible therefore." *Farben* Case, p. 1141.

1313 *Farben* Case, p. 1128.

1314 *Farben* Case, p. 1153.

1315 *Farben* Case, p. 1155 (emphasis added).

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1316 *Ministries* Case, p. 584. The Tribunal concluded: "There is no doubt, and we so find, that the defendant Keppler knew the plan, knew what it entailed, and was one of the prime factors in its [the agency's] successful organization and operation." *Ministries* Case, p. 586.

1317 *Ministries* Case, p. 588.

1318 *Ministries* Case, p. 621.

1319 *Ministries* Case, p. 620.

1320 *Ministries* Case, p. 621.

1321 As the Tribunal put it, "[w]e are convinced that Stuckart was fully aware of the fate which awaited Jews deported to the East." *Ministries* Case, p. 620.

1322 The Tribunal found: "We hold that Schellenberg in fact knew of these practices and is guilty of the crimes as set forth." *Ministries* Case, p. 671.

1323 The Tribunal explained: "[t]he foregoing evidence would seem to establish beyond doubt Koerner's knowledge of and participation in the slave-labour program." *Ministries* Case, p. 828.

1324 The Tribunal found that "[a]s to the employment of slave laborers in the concerns coming within the sphere of the RVK and in the plants of the Hermann Goering Works, there can be no question but that such objectionable labor conditions and treatment were within the knowledge of the defendant Pleiger . . . . In view of the evidence and in view of the positions held by Pleiger we cannot believe that he was not aware of the objectionable and inhumane conditions under which the laborers in some of the mines and some of the plants were forced to labor." *Ministries* Case, p. 843.

1325 *Ministries* Case, pp 775-777. Karl Rasche was one of the executive officers of the Dresdner Bank. The Defence's contention that Rasche was acquitted of Count Five because the Tribunal applied a standard different from knowledge cannot be sustained. It is clear from the Tribunal's reasoning that Rasche could not be found guilty because his acts did not satisfy the *actus reus*, whatever his *mens rea*. The Tribunal found: "It is inconceivable to us that the defendant did not possess that knowledge, and we find that he did. The real question is, is it a crime *to make a loan*, knowing or having good reason to believe that the borrower will use the funds in financing enterprises which are employed in using labor in violation of either national or international law? . . . Our duty is to try and punish those guilty of violating international law, and *we are not prepared to state that such loans constitute a violation of that law*, nor has our attention been drawn to any ruling to the contrary." *Ministries* Case, p. 622 (emphasis added). The Tribunal restated and clarified its reasoning on this in respect of Count Six as well. *Ministries* Case, p. 784 ("As hereinbefore indicated, on this question in discussions in our treatment of count five, and *in view of the evidence generally with respect to the credits here involved*, we do not find adequate basis for a holding of guilty *on account of such loans*.") (emphasis added). *Contra* Taylor Appeal, para. 353; *Presbyterian Church of Sudan v. Talisman Energy*, 582 F.3d 244, 259 (2nd Cir. 2009).

1326 *Ministries* Case, p. 478 (emphasis added).

1327 *Ministries* Case, p. 672.

1328 *Ministries* Case, p. 680 (emphasis added).

1329 *See, e.g.*, *Pohl* Case, p. 989 (Oswald Pohl, chief of the SS Economic Administrative Main Office ("WVHA"), was convicted of crimes committed during Operation Reinhart because "[h]aving knowledge of the illegal purposes of the action and of the crimes which accompanied it, his active participation even in the after phases of the action make him *particeps criminis* in the whole affair."); p. 994 (The Tribunal found that August Frank "must conclusively be convicted of knowledge of and active and direct participation in the slave labour program.").

1330 *Pohl* Case, p. 1019.

1331 *Pohl* Case, p. 1020. With respect to Heinz Karl Fanslau, the Tribunal found "Fanslau knew of the slavery in the concentration camps and took an important part in promoting and administering it. This being true, he is guilty of war crimes and crimes against humanity." *Pohl* Case, p. 998. Georg Loerner was found guilty because he "knew of the underlying program of OSTI [Eastern Industries] to fully utilize Jewish slave labour in its enterprises." *Pohl* Case, p. 1006.

1332 *Einsatzgruppen* Case p. 569 (emphasis added). *See* also *Einsatzgruppen* Case, p. 577 (In convicting von Radezky, the Tribunal held that "the defendant *knew* that Jews were executed by Sonderkommando 4a because they were Jews, and . . . von Radetzky took a consenting part in these executions."). *Contra* Taylor Appeal, para. 352.

1333 *Zyklon B* Case, para. 2. Bruno Tesch was the owner of the firm "Tesch and Stabenow" which had the exclusive agency for the supply of poison gas "Zyklon B" intended for the extermination of vermin. Karl Weinbacher was Tesch's Procurist or second-in-command and Joachim Drosihn was the firm's first gassing technician.

1334 *Zyklon B* Case, para. 9. The Appeals Chamber approvingly notes the Judge Advocate's instructions to the Court, which clarified that it was necessary to find first, that the crimes were committed, second, that the accused's acts and conduct had a substantial effect on the commission of the crimes, and third, that the accused knew of the causal relationship between their acts and conduct and the commission of the crimes. The Judge Advocate pointed out that the Court "*must be sure of three facts*, first, that Allied nationals had been gassed by means of Zyklon B; secondly, that this gas had been supplied by Tesch and Stabenow; thirdly, that the accused *knew* that the gas was to be used for the purpose of killing human beings." *Zyklon B* Case, para. 9 (emphasis added). This was a matter of fact to be assessed based upon the evidence. In the *Farben* Case, the Tribunal found that the defendants did not know that a similar gas, Cyclon-B, was to be used in the commission of crimes. *Farben* Case, p. 1169. *Zyklon B* and *Farben* are consistent in that, as a matter of law, knowledge of the consequence of one's acts and conduct is culpable *mens rea*, although different factual conclusions were reached based on the evidence in the cases. *Contra* Taylor Appeal, para. 352.

1335 *Rhode* Case, p. 56.

1336 *Roechling* Appeal Judgment, p. 1119. *See* also *Roechling* Appeal Judgment, p. 1120 ("Furthermore Ernst Roechling acknowledged in the course of the first trial that he was never subjected to coercion, that he was well aware of the fact that Hermann Roechling had set himself the task of increasing the war potential of the Reich, and that he assisted him voluntarily in this task in France.").

1337 *Franz Holstein and Twenty-Three Others* Case.

1338 *Robert Wagner and Six Others* Case, p 23.

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1339 UNWCC Law Reports, Vol. VIII, pp. 32-33 (emphasis added).

1340 In the *Jaluit Atoll* Case, the defendant Tasaki admitted to having released prisoners to the actual executioners, knowing that the prisoners were to be executed. Although he argued the defence of superior orders, he was convicted of the charges. *Jaluit Atoll* Case, pp 73-76.

1341 The Appeals Chamber notes that "[t]he International Law Commission shall have for its object the promotion of the progressive development of international law and its codification." Statute of the International Law Commission, Art. 1(1). Article 15 further provides: "In the following articles the expression 'progressive development of international law' is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression 'codification of international law' is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine."

1342 *Furundžija* Trial Judgment, para. 227.

1343 The Commentary notes: "Thus, the form of participation of an accomplice *must entail assistance which facilitates the commission of a crime in some significant way*. In such a situation, an individual is held responsible for his own conduct which contributed to the commission of the crime notwithstanding the fact that the criminal act was carried out by another individual." It further notes regarding Article 2(3)(e): "The term 'directly' is used to indicate that the individual must in fact participate in some meaningful way in formulating the criminal plan or policy, including endorsing such a plan or policy proposed by another." Report of the International Law Commission, paras 11 and 13, p. 21 (emphasis added). *See* also *Furundžija* Trial Judgment, para. 232 ("In view of this, the Trial Chamber believes the use of the term 'direct' in qualifying the proximity of the assistance and the principal act to be misleading as it may imply that assistance needs to be tangible, or to have a causal effect on the crime. This may explain why the word 'direct' was not used in the Rome Statute's provision on aiding and abetting.").

1344 Report of the International Law Commission, para. 11 , p. 21 (emphasis added).

1345 Taylor Appeal, paras 361-364, *citing* German Federal Court of Justice (BGH), Case No. 4 StR 453/00, Judgement of 8 March 2001, p. 10 (Germany); Stefani, G. *et al*., *Droit pénal génénal*, Dalloz (Paris, 2000), p. 290 (France); Cass. pen., sez. VI 12-06-2003 (21-03-2003), n. 25705 (Italy); Rejman Genowefa (ed.) *Kodeks karny część ogólna—Komentarz*, Wydawnictwo C.H. Beck (Warszawa 1999) (Poland); United States Model Penal Code, § 2.06(4) and *United States v. Peoni*, 100 F.2d 401, 402 (2nd Cir 1938); Criminal Code, R.S.C. 1985, c. C-46, s. 21(b) (Canada); *Gillick v. West Norfolk and Wisbech A.H.A.*, [1986] AC 112 (England); *R. v. Lam Kit*, [1988] 1 HKC 679, 680 and *R. v. Leung Tak-yin* [1987] 2 HKC 250 (Hong Kong) and Yeo, S., "India", in Heller, K. and Dubber, M., eds. *The Handbook of Comparative Criminal Law*, Stanford University Press (Stanford: 2011), p. 296, citing *Mohd Jamal v. Emperor*, A.I.R. 1953 All 668 (India).

1346 K.J. Heller and M. D. Dubber, The Handbook of Comparative Criminal Law, p. 466.

1347 Article 121-7 establishes: "*Est complice d'un crime ou d'un délit la personne qui sciemment, par aide ou assistance, en a facilité la préparation ou la consommation. Est également complice la personne qui par don, promesse, menace, ordre, abus d'autorité ou de pouvoir aura provoqué à une infraction ou donné des instructions pour la commettre*." Article 121-6 of the French Criminal Code provides that the accomplice to an offence is punishable as a perpetrator. Article 121-6 reads: "[s]*era puni comme auteur le complice de l'infraction, au sens de l'article 121-7*."

1348 U.S. Military Regulations, 32 C.F.R. 11.6 (emphasis added).

1349 *Tadić* Trial Judgment, paras 675-677, discussing the *Rhode*, *Justice*, *Hostage* and *Mathausen* cases. The Appeals Chamber notes with approval the *Tadić* Trial Chamber's reading of the *Hostage* case: "[s]imilarly, in the United States of America v. Wilhelm List ("Hostage case"), the court noted that to find the accused guilty, 'we shall require proof of a causative, overt act or omission from which a guilty intent can be inferred before a verdict of guilty will be pronounced. Unless this be true, a crime could not be said to have been committed unlawfully, wilfully, and knowingly as charged in the Indictment." *Tadić* Trial Judgment, para. 675, *quoting Hostage* Case, p. 1261.

1350 *Tadić* Trial Judgment, para. 674 (emphasis added).

1351 *Tadić* Trial Judgment, para. 689. The *Tadić* Trial Chamber also expressed this concept by saying that "intent founded on inherent knowledge, proved or inferred, is required for a finding of guilt . . . ." *Tadić* Trial Judgment, para. 677.

1352 *Tadić* Trial Judgment, para. 692, adopted by *Čelebići* Trial Judgment, at para. 329. The *Tadić* Appeals Chamber confirmed that "in the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of a specific crime by the principal." *Tadić* Appeal Judgment, para. 229.

1353 *Čelebići* Trial Judgment, para. 325.

1354 *Čelebići* Trial Judgment, para. 326. The ICTY Appeals Chamber did not disturb this articulation on appeal. *Čelebići* Appeal Judgment, para. 352.

1355 *See Aleksovski* Trial Judgment, para. 59: "it should be noted from the outset that the accused was held responsible under Article 7(1) not for the crimes that he allegedly committed himself but for those committed by others which he is said to have personally ordered, instigated or otherwise aided and abetted."

1356 *Aleksovski* Trial Judgment, para. 61 (emphasis added), *citing Tadić* Trial Judgment, para. 674. The *Aleksovski* Appeals Chamber confirmed this definition (*see Aleksovski* Appeal Judgment, para. 164) and also held that "[i]n relation to the Trial Chamber's factual findings regarding *mens rea* in the present case, the Appeals Chamber is satisfied that the Trial Chamber found that the Appellant *deliberately participated in* or *accepted the acts* which gave rise to his liability under Articles 7(1) and 7(3) of the Statute for outrages upon personal dignity and was therefore guilty of these offences." *Aleksovski* Appeal Judgment, para. 27 (emphasis added).

1357 Which reads in relevant parts: "3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

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(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
(ii) Be made in the knowledge of the intention of the group to commit the crime . . . "

1358 Article 6(1) of the Special Court Statute establishes individual criminal liability for planning the commission of crimes. Article 25(3) does not expressly establish such liability, yet the Defence does not challenge Taylor's conviction for planning crimes on the basis that Article 25(3) demonstrates that planning liability is not part of customary international law.

1359 The Appeals Chamber notes in this respect that ICC Chambers have not reached such a holding and that ICC Chambers do not look to customary international law in interpreting Article 25(3). *See*, *e.g.*, *Katanga* Confirmation of Charges Decision, para. 508.

1360 *Contra* Taylor Appeal, paras 338, 339. Accordingly, the Appeals Chamber need not address the Parties' submissions as to the *actus reus* and *mens rea* elements of individual criminal liability under Article 25(3)(c),(d), which, in this Chamber's view, is within the competence of the ICC Appeals Chamber and on which the ICC Appeals Chamber has not yet ruled. In this regard, it should be noted that the Defence did not make submissions regarding the ICC Appeals Chamber's holdings that the aim of the Rome Statute is to "put an end to impunity." *Lubanga OA 15 OA 16* Judgment, para. 77, *reaffirmed by Katanga* Regulation 55 Appeal Decision, para. 22.

1361 In *Furundžija*, the Trial Chamber framed the legal question to be addressed in the following terms: "whether it is necessary for the accomplice to share the *mens rea* of the principal or whether mere knowledge that his actions assist the perpetrator in the commission of the crime is sufficient to constitute *mens rea* in aiding and abetting the crime." *Furundžija* Trial Judgment, para. 236. The Trial Chamber concluded that "it is not necessary for the accomplice to share the *mens rea* of the perpetrator, in the sense of positive intention to commit the crime. Instead, the clear requirement in the vast majority of the cases is for the accomplice to have knowledge that his actions will assist the perpetrator in the commission of the crime." *Furundžija* Trial Judgment, para. 245. It appears that, in its analysis, the Trial Chamber was motivated by a concern to distinguish between principals and accessories to the crime based primarily on the subjective element of personal culpability. Interestingly, the Trial Chamber also found that "knowledge" was the standard adopted in the *Tadić* Trial Judgment, although it stated that the *Tadić* Trial Chamber "sometimes somewhat misleadingly expressed as 'intent.'" *Furundžija* Trial Judgment, para. 247.

1362 *Tadić* Trial Judgment, para. 674.

1363 Under customary international law, the appropriate standard is "awareness of the substantial likelihood," as an accused who participates in the commission of a crime with such awareness accepts the commission of the crime. Plain language is given its plain meaning: "awareness of the substantial likelihood" is clearly distinct from "awareness of a probability."

1364 *See Brima et al*. Appeal Judgment, para. 242: "[t]he *mens rea* required for aiding and abetting is that the accused knew that his acts would assist the commission of the crime by the perpetrator or that he was aware of the substantial likelihood that his acts would assist the commission of a crime by the perpetrator." (*quoting Brima et al.* Trial Judgment, para. 776); *Sesay et al.* Appeal Judgment, para. 546. The STL Appeals Chamber subsequently endorsed this Court's jurisprudence that awareness of a substantial likelihood is a culpable *mens rea* for aiding and abetting liability in customary international law. STL Applicable Law Decision, para. 227. The Appeals Chamber notes that in certain domestic legal systems this mental state ranges from "being 'indifferent' to the result, to 'being reconciled' with the result as a possible cost of attaining one's goal". E. van Sliedregt, *Individual Criminal Responsibility in International Law*, p. 41.

1365 As the Defence submissions are limited to reliance on ICTY jurisprudence that it challenges in the first instance, it fails to put forward sufficient submissions so as to lead the Appeals Chamber to reconsider its prior holding. The STL Appeals Chamber subsequently endorsed this Court's jurisprudence that awareness of the substantial likelihood is a culpable *mens rea* for aiding and abetting liability in customary international law. STL Applicable Law Decision, para. 227. In addition, the Appeals Chamber notes the ICTY Appeals Chamber held in *Kordić and Čerkez* that an accused who performs the *actus reus* of ordering, planning or instigating liability with the awareness of the substantial likelihood that he will have an effect on the commission of the crime "has to be regarded as accepting that crime." It further held that this awareness and acceptance of the criminal consequence of one's acts or conduct is culpable *mens rea* in customary international law. *Kordić and Čerkez* Appeal Judgment, paras 30-32. *See* also ICRC Commentary, Additional Protocol I, para. 3474. The Appeals Chamber further notes that the *Blaškić* Trial Chamber, discussing the *mens rea* of aiding and abetting liability, opined that there was a distinction between "knowledge" and "intent" and that both elements must be present to establish *mens rea*. It held that "intent" encompassed both "direct" and "indirect" intent, the latter describing the accused's acceptance of the "possible and foreseeable consequence" of his conduct. *See Blaškić* Trial Judgment, para. 286. On appeal, the Appeals Chamber found that the *Blaškić* Trial Chamber erred in articulating an element additional to "knowledge" for the *mens rea* of aiding and abetting liability. *See Blaškić* Appeal Judgment, para. 49, *citing Vasiljević* Appeal Judgment, para. 102. However, as the ICTY Appeals Chamber itself later held, acting with awareness and acceptance of the criminal consequence of one's acts or conduct is a culpable *mens rea* in customary international law. The ICTY Appeals Chamber did not identify a principled legal basis for distinguishing aiding and abetting liability from ordering, planning or instigating liability in this respect. The Appeals Chamber further notes that the *Furundžija* Trial Judgment, which is the origin of the ICTY's jurisprudence on the *mens rea* for

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aiding and abetting liability, only considered whether knowledge was a culpable *mens rea*, not whether it was the *only* culpable *mens rea*. *See Furundžija* Trial Judgment, para. 249.

1366 Trial Judgment, para. 6949 (emphasis added).

1367 Taylor Appeal, paras 394-396. *See* also Taylor Appeal, para. 441.

1368 *Accord Naletilic and Martinovic* Appeal Judgment, para. 119, *citing Kordic and Cerkez* Appeal Judgment, para. 311.

1369 Trial Judgment, para. 6885.

1370 Trial Judgment, para. 6951.

1371 Taylor Appeal, paras 320, 390, 448, 449.

1372 Taylor Appeal, paras 448, 449, 459.

1373 Taylor Appeal, para. 459.

1374 Prosecution Response, para. 397, 398.

1375 Prosecution Response, para. 308.

1376 Taylor Reply, para. 54.

1377 *Accord Blaškić* Appeal Judgment, para. 41.

1378 Taylor Appeal, para. 448.

1379 *Contra* Appeal transcript, 23 January 2013, pp 50005, 50006 ("[I]f you analyze consequence, if you analyze knowledge, knowledge of consequences in the aggregate, then it is virtually impossible not to extend liability to all kinds of activities that are widely regarded as not criminal. Why is it that Wal-Mart is not guilty of aiding and abetting gun violence in the United States even though it is quite clear they are the number one seller of ammunition and guns in the United States? *And statistically there's no doubt that guns are being used every day and will continue to be used every day in very serious violence*. There can't be any doubt in the minds of anyone working or running Wal-Mart that that ammunition is being used for that purpose.").

1380 *See infra* paras 533-540, 564-566.

1381 Trial Judgment, paras 6788 *et seq*.

1382 While "purpose" relates to an accused's *mens rea*, in particular to the aider and abettor's attitude towards the consequence of his acts, "motive" concerns the extraneous reasons and motivations that triggered an accused to engage in criminal conduct.

1383 Taylor Appeal, para. 342.

1384 U.S. Model Penal Code, Art. 2.06(3).

1385 U.S. Model Penal Code and Commentaries, p. 318, fn.58. The drafters of the Model Penal Code did not adopt this alternative standard because it was considered that "the need for stating a general principle in this section pointed toward a narrow formulation in order not to include situations where liability was inappropriate."

1386 Model Penal Code and Commentaries, p. 319. The Commentary states that "[t]his approach may well constitute a sensible accommodation of the competing considerations advanced at the Institute meeting." The Statute does not establish such offences.

1387 Taylor Appeal, paras 361-364, *citing R. v. Lam Kit*, [1988] 1 HKC 679, 680, *R. v. Leung Tak-yin* [1987] 2 HKC 250 and *R. v. Clarkson*, 1971 55 Cr. App. R. 445.

1388 *Tadić* Trial Judgment, para. 689.

1389 Taylor Appeal, paras 361-364, *citing* Criminal Code, R.S.C. 1985, c. C-46, s. 21(b) (Canada).

1390 *R. v. Briscoe*, 2010 SCC 13, [2010] 1 S.C.R. 411, para. 16. The example provided in *Hibbert* to illustrate the "perverse consequences" was as follows: "If a man is approached by a friend who tells him that he is going to rob a bank and would like to use his car as the getaway vehicle for which he will pay him $100, when that person is . . . charged under s. 21 for doing something for the purpose of aiding his friend to commit the offence, can he say "My purpose was not to aid the robbery but to make $100"? His argument would be that while he knew that he was helping the robbery, his desire was to obtain $100 and he did not care one way or the other whether the robbery was successful or not." The Court further held: "As for knowledge, in order to have the intention to assist in the commission of an offence, the aider must know that the perpetrator intends to commit the crime, although he or she need not know precisely how it will be committed. That sufficient knowledge is a prerequisite for intention is simply a matter of common sense."

1391 Taylor Appeal, paras 314, 315, 317, 388-393, 451.

1392 Taylor Appeal, paras 314, 315, 390, 391, 450, 451.

1393 Taylor Appeal, para. 315.

1394 Taylor Appeal, paras 388-393.

1395 Prosecution Response, paras 272, 276.

1396 Prosecution Response, paras 276, 314, 315, 317.

1397 Prosecution Response, para. 318.

1398 Prosecution Response, para. 408.

1399 Taylor Reply, para. 69.

1400 *See, e.g., Netherlands v. Nuhanovic* Supreme Court Judgment.

1401 IMT Judgment, p. 223.

1402 *Brđanin* Appeal Judgment, para. 247.

1403 Appeal transcript, 23 January 2013, pp. 49999, 50000.

1404 Foreign Operations, Export Financing, and Related Programs Appropriations, 2001, Section 563 of Pub.L. No. 106-429, 114 Stat. 1900A-17, (2000); Department of Defence Appropriations Act, 2001, Pub.L. No. 106-259, § 8092, 114 Stat. 656 (2000).

1405 EU Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, art. 2(2)(c).

1406 G.A. Res. 67/234 (2013).

1407 S.C. Res. 1265 (1999); S.C. Res. 1296 (2000); S.C. Res. 1674 (2006); S.C. Res. 1706 (2006); S.C. Res. 1894 (2009); A/RES/63/308 (2009); S.C. Res. 1973 (2011); S.C. Res. 1975 (2011). *See* also African Union, Ext/EX.CL/2 (VII).

1408 ICJ Advisory Opinion on Nuclear Weapons, Dissenting Opinion of Judge Shahabuddeen, p. 203

1409 Trial Judgment, para. 484.

1410 Taylor Appeal, para. 358.

1411 Taylor Appeal, para. 355.

1412 Appeal transcript, 22 January 2013, p. 49908.

1413 Appeal transcript, 22 January 2013, p. 49908.

1414 Appeal transcript, 22 January 2013, pp. 49908, 49909.

1415 Prosecution Response, paras 295-299.

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1416 Prosecution Response, paras 294, 295.

1417 Appeal transcript, 22 January 2013, pp 49849-49851.

1418 Appeal transcript, 22 January 2013, p. 49851.

1419 Taylor Reply, para. 52.

1420 Trial Judgment, para. 484.

1421 *See* Taylor Appeal, paras 354-359. Ground 16 states: "The Trial Chamber erred in law in defining the *mens rea* of aiding and abetting as requiring no more than that an action is performed with an awareness of a substantial likelihood that the action would provide some 'practical assistance' to a crime."

1422 Defence Request to Amend Notice of Appeal. The Defence submitted that it "had 'good reason' not to have been in the position to make arguments on the basis of an unforeseeable reversal of the law." Para. 12.

1423 Prosecution Motion Regarding the ICTY *Perišić* Appeals Judgment.

1424 Decision on Prosecution Motion Regarding the ICTY *Perišić* Appeals Judgment; Order Denying Defence Motion to Amend Notice of Appeal.

1425 In its Request, the Defence submitted that "[t]he Appeals Chamber ought to have the freedom to directly consider the correctness of the Trial Judgment in light of the *Perišić* Appeal Judgment." Defence Request to Amend Notice of Appeal, para. 15. The Appeals Chamber requested that the Parties provide submissions on "specific direction" during the oral hearing. *See* Oral Hearing Scheduling Order ("(iii) Whether acts of assistance not 'specifically directed' to the perpetration of a crime can substantially contribute to the commission of the crime for aiding and abetting liability. Whether the Trial Chamber's findings meet the 'specific direction' standard.").

1426 Statute, Art. 20(3).

1427 Rule 72*bis*(ii).

1428 *See supra* paras 365-367.

1429 *Perišić* Appeal Judgment, para. 36 ("The Appeals Chamber, Judge Liu dissenting, thus reaffirms that no conviction for aiding and abetting may be entered if the element of specific direction is not established beyond reasonable doubt, either explicitly or implicitly.").

1430 *See supra* paras 362-385, 413-437. *Accord* STL Decision on Applicable Law, paras 225-227; *Čelibići* Appeal Judgment, para. 352; *Kayishema and Ruzindana* Appeal Judgment, paras 186, 198; *Duch* Trial Judgment, paras 478, 532-535; *Tadić* Trial Judgment, paras 661-692; *Aleksovski* Trial Judgment, paras 58-65; *Čelibići* Trial Judgment, paras 319-329.

1431 *See supra* para. 428.

1432 *See supra* paras 462-465.

1433 *See supra* paras 362-385.

1434 *Contra Perišić* Appeal Judgment, paras 37 ("At the outset, the Appeals Chamber, Judge Liu dissenting, recalls that the element of specific direction establishes a culpable link between assistance provided by an accused individual and the crimes of principal perpetrators."), 38 ("In such a case, the existence of specific direction, which demonstrates the culpable link between the accused aider and abettor's assistance and the crimes of the principal perpetrators, will be self-evident.").

1435 *See supra* paras 390-392.

1436 *See supra* paras 362-385.

1437 *Sesay et al*. Appeal Judgment, para. 769; *Fofana and Kondewa* Appeal Judgment, para. 75. *Accord Ntawukulilyayo* Appeal Judgment, para. 214; *Lukić and Lukić* Appeal Judgment, para. 468; *Blagojević and Jokić* Appeal Judgment, para. 134.

1438 The phrase "customary international law" does not appear in the Majority's reasoning or conclusions.

1439 *Perišić* Appeal Judgment, paras 25-36 (discussing only ICTY and ICTR jurisprudence).

1440 *Perišić* Appeal Judgment, para. 34. *See* also *Perišić* Appeal Judgment, paras 25 ("Before turning to Perišić's contention, the Appeals Chamber considers it appropriate to review its prior aiding and abetting jurisprudence."), 28 ("To date, no judgement of the Appeals Chamber has found cogent reasons to depart from the definition of aiding and abetting liability adopted in the *Tadić* Appeal Judgement.").

1441 *Perišić* Appeal Judgment, para. 34. The ICTY Appeals Chamber further stated in relation to the *Mrkšić and Sljivančanin* Appeal Judgment: "Instead, the relevant reference to specific direction: was made in a section and paragraph dealing with *mens rea* rather than *actus reus*; was limited to a single sentence not relevant to the Appeals Chamber's holding; did not explicitly acknowledge a departure from prior precedent; and, most tellingly, cited to only one previous appeal judgement, which in fact confirmed that specific direction does constitute an element of aiding and abetting liability."

1442 *See Tadić* Appeal Judgment; *Blagojević and Jokić* Appeal Judgment; *Kvočka et al.* Appeal Judgment; *Blaškić* Appeal Judgment; *Vasiljević* Appeal Judgment; *Krnojelac* Appeal Judgment; *Kupreškić et al.* Appeal Judgment; *Aleksovski* Appeal Judgment; *Simić* Appeal Judgment; *Orić* Appeal Judgment; *Haradinaj et al.* Appeal Judgment; *Limaj et al.* Appeal Judgment; *Čelibići* Appeal Judgment; *Krstić* Appeal Judgment; *Brđanin* Appeal Judgment; *Krajišnik* Appeal Judgment; *Gotovina and Markač* Appeal Judgment; *Mrkšić and Sljivančanin* Appeal Judgment; *Lukić and Lukić* Appeal Judgment.

1443 *Perišić* Appeal Judgment, paras 26, 27.

1444 *Tadić* Appeal Judgment, paras 185-229. *Accord Aleksovski* Appeal Judgment, para. 163 ("Subsequently, in the *Tadic* Judgement, the Appeals Chamber briefly considered the liability of one person for the acts of another person where the first person has been charged with aiding and abetting that other person in the commission of a crime. This was in the context of contrasting that liability with the liability of a person charged with acting pursuant to a common purpose or design with another person to commit a crime, and for that reason that judgement does not purport to be a complete statement of the liability of the person charged with aiding and abetting."). *Contra Perišić* Appeal Judgment, para. 27 ("The Appeals Chamber recalls that the first appeal judgement setting out the parameters of aiding and abetting liability was the *Tadić* Appeal Judgment . . . . In *defining the elements of aiding and abetting liability*, the *Tadić* Appeal Judgment contrasted aiding and abetting with JCE . . . .") (emphasis added). This Appeals Chamber understands that in noting that aiders and abettors "specifically direct" their acts and conduct *to the commission of the crime*, as opposed *to the furtherance of the common purpose*, the *Tadić* Appeals Chamber was emphasising this fundamental distinction between joint criminal enterprise and other forms of liability,

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including aiding and abetting.

1445 *Perišić* Appeal Judgment, paras 28-36.

1446 *Mrkšić and Sljivančanin* Appeal Judgment, para. 32.

1447 *Lukić and Lukić* Appeal Judgment, para. 35.

1448 *Perišić* Appeal Judgment, para. 36.

1449 *Perišić* Appeal Judgment, para. 36. *See* also *Perišić* Appeal Judgment, paras 31 ("Moreover, the *Blagojević and Jokić* Appeal Judgement expressly considered the [*Čelebići*] Appeal Judgement in both its analysis of cases that did not explicitly refer to specific direction, and *its conclusion that such cases included an implicit analysis of specific direction*.") (emphasis added), 34 ("These indicia suggest that the formula "not an essential ingredient" was an attempt to summarise, in passing, the *Blagojević and Jokić* Appeal Judgement's holding that *specific direction can often be demonstrated implicitly* through analysis of substantial contribution, rather than abjure previous jurisprudence establishing that specific direction is an element of aiding and abetting liability.") (emphasis added), 35 ("The 2012 *Lukić and Lukić* Appeal Judgement approvingly quoted the *Blagojević and Jokić* Appeal Judgement's conclusion that a finding of specific direction can be *implicit* in an analysis of substantial contribution.") (emphasis added), 38 ("Where such proximity is present, *specific direction may be demonstrated implicitly through discussion of other elements of aiding and abetting liability*, such as substantial contribution.") (emphasis added). *See* further *Perišić* Appeal Judgment, para. 39, fn 102 ("The Appeals Chamber underscores that the requirement of explicit consideration of specific direction does not foreclose the possibility of convictions in case of remoteness, but only means that such convictions require explicit discussion of how evidence on the record proves specific direction.").

1450 *Perišić* Appeal Judgment, para. 38 ("In such a case, *the existence of specific direction, which demonstrates the culpable link between the accused aider and abettor's assistance and the crimes of principal perpetrators, will be self-evident*.") (emphasis added).

1451 Rule 87(A).

1452 Statute, Art. 17(3).

1453 *Supra* paras 362-385.

1454 *Supra* paras 390-392.

1455 *Supra* paras 390-392.

1456 *Perišić* Appeal Judgment, paras 40, 42.

1457 *Fofana and Kondewa* Appeal Judgment, para. 72. *Accord Kalimanzira* Appeal Judgment, para. 87, fn 238; *Ntagerura et al.* Appeal Judgment, para. 372; *Mrkšić and Sljivančanin* Appeal Judgment, para. 81; *Simić* Appeal Judgment, para. 85; *Blaškić* Appeal Judgment, para. 48; *Čelebići* Appeal Judgment, para. 352.

1458 *See, e.g.*, *Sesay et al.* Appeal Judgment, para. 541.

1459 Trial Judgment, paras 469, 470 (alterations in original omitted).

1460 Taylor Appeal, paras 209-211.

1461 Taylor Appeal, para. 209 (emphasis in original), *citing Semanza* Trial Judgment, para. 380.

1462 Taylor Appeal, para. 210, *citing Brđanin* Trial Judgment, paras 357, 358 ("When there is evidence of an accused having formulated a plan that does not constitute a plan to commit concrete crimes, this does not give rise to liability through the mode of liability of 'planning.'"). The ICTY Trial Chamber further stated that "[r]esponsibility for 'planning' a crime could thus, according to the above definition, only incur if it was demonstrated that the Accused was substantially involved at the preparatory stage of that crime in the concrete form it took, which implies that he possessed sufficient knowledge thereof in advance. . . . This requirement of specificity distinguishes 'planning' from other modes of liability." On the facts, the Trial Chamber found: "Although the Accused espoused the Strategic Plan, it has not been established that he personally devised it. The Accused participated in its implementation mainly by virtue of his authority as President of the ARK Crisis Staff and through his public utterances. Although these acts may have set the wider framework in which crimes were committed, the Trial Chamber finds the evidence before it insufficient to conclude that the Accused was involved in the immediate preparation of the *concrete crimes*." (emphasis in original).

1463 Taylor Appeal, paras 210, 211.

1464 Prosecution Response, para. 177, *citing* Trial Judgment, para. 469, *Kordić and Čerkez* Appeal Judgment, paras 31, 976.

1465 Prosecution Response, para. 177, *citing Boškoski and Tarčulovski* Appeal Judgment, paras 169-172, *Kordić and Čerkez* Appeal Judgment, paras 26, 30.

1466 Taylor Reply, para. 28.

1467 *Sesay et al.* Appeal Judgment, para. 704.

1468 *Sesay et al.* Appeal Judgment, para. 776.

1469 *Brima et al.* Appeal Judgment, para. 302.

1470 *Brima et al.* Appeal Judgment, para. 306.

1471 *Brima et al.* Trial Judgment, para. 768.

1472 *Brima et al.* Appeal Judgment, para. 301.

1473 *Sesay et al.* Appeal Judgment, para. 774.

1474 The ICTY Appeals Chamber upheld convictions for planning crimes committed in a range of locations and at distinct times on the basis that the accused approved a general plan and the later crimes were committed in furtherance of that general plan. *See Kordić and Čerkez* Appeal Judgment, paras 981-986.

1475 *Boškoski and Tarčulovski* Appeal Judgment, paras 168, 169.

1476 *Boškoski and Tarčulovski* Appeal Judgment, para. 171.

1477 *Boškoski and Tarčulovski* Appeal Judgment, para. 172.

1478 The Trial Chamber held that the "accused need only design an 'act or omission'—and not necessarily a crime or underlying offence *per se*—if he has the intent that a crime or underlying offence be committed in execution of the plan, or if he is aware of the substantial likelihood that a crime or underlying offence will be committed." Trial Judgment, para. 469, fn. 1105, *citing Kordić and Čerkez* Appeal Judgement, paras. 31, 976. *Accord Milutinovic et al.* Trial Judgment, para. 81, fn. 84. *See Boškoski and Tarčulovski* Appeal Judgment, para. 172; *Kordić and Čerkez* Appeal Judgment, para. 31; *Semanza* Trial Judgment, para. 380; *Limaj* Trial Judgment, para. 513.

1479 *Sesay et al*. Appeal Judgment, paras 687, 770; *Brima et al.* Appeal Judgment, para. 301.

1480 *Sesay et al.* Appeal Judgment, paras 687, 769; *Brima et al*. Appeal Judgment, para. 301. *See* also *Kordić and Čerkez*

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Appeal Judgment, para. 26.

1481 *Brima et al.* Appeal Judgment, para. 301. *See* also *Sesay et al*. Appeal Judgment, para. 770. *Accord Boškoski and Tarčulovski* Appeal Judgment, para. 154; *Kordić and Čerkez* Appeal Judgement, paras 26, 29, 31.

1482 *See Boškoski and Tarčulovski* Appeal Judgment, para. 154, fn. 418.

1483 *Sesay et al.* Appeal Judgment, para. 769. In some jurisprudence, this requirement has been expressed in terms that the crime must have been committed within the "framework" of the accused's plan or design. *See, e.g.*, *Galić* Trial Judgment, para. 168, *citing Akayesu* Trial Judgement, para. 473; *Blaškić* Trial Judgement, para. 279; *Kordić and Čerkez* Trial Judgement, para. 386. However, the legal requirement is that an accused's acts and conduct had a substantial effect on the commission of the crimes, and alternative references to the "framework" of the plan may potentially cause confusion. The Appeals Chamber accordingly clarifies that planning liability does not require a separate and additional element that the crimes committed must have been within the "framework" of an accused's plan, and affirms that where an accused has a substantial effect on the commission of the crimes, the culpable link between the accused's acts and conduct and the crimes committed is established.

1484 *Brima et al*. Appeal Judgment, para. 301. This Appeals Chamber agrees that "[a] person who plans an act or omission with the awareness of the substantial likelihood that a crime will be committed in the execution of that plan, has the requisite *mens rea* for . . . planning. Planning with such awareness has to be regarded as accepting that crime."*Kordić and Čerkez* Appeal Judgment, para. 31. *See* also *D. Milošević* Appeal Judgment, para. 268; *Nahimana et al.* Appeal Judgment, para. 479.

1485 Trial Judgment, Disposition.

1486 Trial Judgment, Disposition.

1487 *See supra* paras 32-45.

1488 *See supra* paras 46-252, 303-343.

1489 *See supra* paras 46-252, 303-343.

1490 *See supra* paras 303-343.

1491 *See supra* 344-496.

1492 *See* Trial Judgment, "Applicable Law."

1493 *See* Trial Judgment, "Factual and Legal Findings."

1494 *See* Trial Judgment, "Law and Findings on the General Requirements."

1495 *See* Trial Judgment, "Factual Findings on the Role of the Accused."

1496 *See* Trial Judgment, "Leadership and Command Structure."

1497 *See* Trial Judgment, "The War Strategy of the RUF/AFRC."

1498 *See* Trial Judgment, "Knowledge of the Accused."

1499 Trial Judgment, paras 6887-6986.

1500 *Supra* paras 303-343.

1501 Trial Judgment, paras 6904, 6915, 6924, 6937, 6946, Disposition.

1502 Trial Judgment, paras 6907-6946.

1503 Taylor Appeal, paras 461, 479.

1504 Taylor Appeal, paras 527, 534, 571, 583.

1505 Taylor Appeal, paras 462-475, 586.

1506 Taylor Appeal, paras 613-622, 645-709.

1507 Taylor Appeal, paras 605-610.

1508 Taylor Appeal, paras 607, 608, 646, 649, 652-654, 658, 665.

1509 Taylor Appeal, paras 641-644.

1510 Taylor Appeal, para. 642.

1511 Taylor Appeal, para. 642.

1512 Prosecution Response, para. 557.

1513 Prosecution Response, paras 496-498.

1514 Prosecution Response, paras 499, 500.

1515 Prosecution Response, paras 558, 559, 567, 570.

1516 Prosecution Response, paras 513, 514.

1517 Prosecution Response, paras 552-554.

1518 Trial Judgment, para. 6904. *See supra* paras 362-385.

1519 Trial Judgment, paras 6901-6946.

1520 Trial Judgment, para. 6905. *See supra* paras 253-302.

1521 Trial Judgment, paras 6910, 6918-6920, 6928-6930, 6932-6935, 6940, 6942, 6943. *See supra* paras 303-343.

1522 Trial Judgment, paras 6911, 6912, 6921, 6931, 6936, 6944.

1523 Trial Judgment, paras 6913-6915, 6922-6924, 6928-6937, 6945, 6946.

1524 *See supra* paras 253-302.

1525 Trial Judgment, paras 558, 559.

1526 *See supra* para. 385.

1527 Trial Judgment, para. 6905.

1528 *See* Trial Judgment, paras 6915, 6924, 6937, 6946. *Supra* paras 303-343. The Trial Chamber found that Taylor provided assistance, encouragement and moral support to the RUF/AFRC personally and through intermediaries and other agents such as Benjamin Yeaten, Ibrahim Bah and Daniel Tamba, and that the assistance, encouragement and moral support provided by those persons were attributable to Taylor. *See supra* paras 171-175, 303-343.

1529 *See supra* para. 362, fn. 1128. The Appeals Chamber is satisfied that the Trial Chamber properly assessed Taylor's acts and conduct in time relative to the crimes charged.

1530 Trial Judgment, paras 6911, 6912, 6921, 6931, 6936, 6944.

1531 The Trial Chamber illustrated some of the ways in which it considered that Taylor's acts and conduct had an effect on the commission of the crimes charged, including: (i) the use of arms and ammunition provided by Taylor during RUF/AFRC military offensives involving widespread and systematic attacks against the civilian population in which crimes charged were committed; (ii) the participation of military personnel provided by Taylor in RUF/AFRC attacks during which crimes charged were committed; (iii) the use of communications support provided by Taylor in furtherance of RUF/AFRC military offensives involving widespread and systematic attacks against the civilian population in which crimes charged were committed; (iv) the provision of logistical support to the RUF/AFRC to facilitate the trade of diamonds, obtained through the commission of enslavement and other crimes charged, for arms and ammunition; and (v) the provision of military advice to the RUF/AFRC regarding the RUF/AFRC's strategy and military offensives involving widespread and systematic attacks against the civilian

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population in which crimes charged were committed. Trial Judgment, paras. 6911, 6919, 6928, 6933, 6944.

1532 Trial Judgment, paras 5834, 5835(xl), 5842, 6913-6915. *See* also Trial Judgment, paras 5829 ("[T]he Trial Chamber has also had regard to the evidence indicating that [Taylor's] support often satisfied a need or request for material at a particular time. The evidence clearly establishes that Bockarie and Sesay would regularly turn to [Taylor] when the RUF was out of arms and ammunition. . . . It is also clear that several shipments enabled the rebel groups to launch major offensives in which they were able to take and control key parts of Sierra Leonean territory."), 5831 ("Indeed, the evidence clearly establishes that throughout much of the Indictment period the RUF and RUF/AFRC heavily and frequently relied on the materiel supplied or facilitated by [Taylor] to carry out offensives and maintain territories throughout much of the Indictment Period."), 5834 ("The Trial Chamber finds that the Prosecution has proved beyond reasonable doubt that the materiel provided or facilitated by [Taylor], beginning with the arrival of the Magburaka shipment in October 1997, was critical in enabling the RUF and the AFRC to carry out offensives and maintain territories until the end of the Indictment period."), 5842 ("Significantly, the RUF/AFRC in fact heavily and frequently relied on the materiel supplied or facilitated by [Taylor]; [Taylor's] support often satisfied a need or request for materiel at a particular time; and shipments of materiel supplied by or facilitated by [Taylor] often contributed to and were causally linked to the capture of further supplies by the RUF and AFRC. . . . [O]n a number of occasions the arms and ammunition which he supplied or facilitated were indispensable for the RUF/AFRC military offensives. The materiel provided or facilitated by [Taylor] was critical in enabling the operational strategy of the RUF and the AFRC during the Indictment period.").

1533 Trial Judgment, paras 6922-6924, 6928-6937. *See* also Trial Judgment, paras 4252 ("the [satellite phone provided by Taylor] enhanced Bockarie's communications capability . . . and this enhanced capability was used in furtherance of RUF/AFRC military activities"), 4256 ("This facilitation of road and air transportation of materiel, as well as security escorts, played a vital role in the operations of the RUF/AFRC during a period when an international arms embargo was in force."), 4261 ("The RUF Guesthouse provided a base for the RUF in Monrovia, which facilitated the regular transfers of arms and ammunition from [Taylor] to the RUF, as well as diamonds from the RUF to [Taylor], transactions which played a vital role in the military operations of the RUF/AFRC in Sierra Leone in which crimes were committed."), 4262 ("Moreover, [Taylor] and his subordinates provided ongoing [communications] support to the RUF during the Indictment period . . . which enhanced the communications capacity of the RUF, and its capacity to carry out military operations in which crimes were committed."), 4619, 4620 (military personnel sent by Taylor participated in attacks in which crimes were committed).

1534 Trial Judgment, paras 6944-6946. *See* also Trial Judgment, paras 3613 ("The Trial Chamber has found that from the time of the Intervention, [Taylor] and his subordinates communicated the imperative to maintain control over Kono, a diamondiferous area. . . . Once Kono had been recaptured [from ECOMOG in February/March 1998], [Taylor] told Bockarie to be sure to maintain control over Kono for the purpose of trading diamonds with him for arms and ammunition."), 3614 ("The Trial Chamber has found that [Taylor] advised Bockarie to recapture Kono following its loss to ECOMOG [in April 1998], again so that diamonds there could be used to purchase arms and ammunition."), 4259 ("[Taylor] instructed Bockarie in 1998 to open a training base in Bunumbu, Kailahun District, and told him also in 1998 that the RUF should construct or re-prepare an airfield in Buedu."), 6455 ("[T]he evidence established that [Taylor] was engaged in arms transactions at the same time that he was involved in the peace negotiations in Lomé, publicly promoting peace at the Lomé negotiations, while privately providing arms and ammunition to the RUF."), 6457 ("The Trial Chamber has found that [Taylor] had significant influence over the RUF decision to release the UNAMSIL peacekeepers, and that in his meeting concerning the release of the peacekeepers with Issa Sesay he promised assistance "in the struggle."), 6458 ("In another meeting late that night, [Taylor] privately advised Issa Sesay to say that he would disarm but "not do it in reality".), 6775 ("The instructions given to Bockarie by [Taylor] were given with the inherent authority [Taylor] had by virtue of his position. Bockarie was deferential to [Taylor] and generally followed his instructions. . . . [T]he role Sankoh envisioned for [Taylor] while he was in detention was that [Taylor] would guide Bockarie, and that Bockarie should look to his guidance . . . ."), 6777 ("Like Sankoh, Koroma turned to [Taylor] for advice and support, and the Trial Chamber accepts that he would have consulted [Taylor]."), 6778 ("[T]he advice and instruction of [Taylor] to the AFRC/RUF mainly focused on directing their attention to the diamondiferous area of Kono in order to ensure the continuation of trade, diamonds in exchange for arms and ammunition."), 6785 ("While participating in ECOWAS efforts to promote peace in Sierra Leone, [Taylor] privately advised Issa Sesay upon his appointment as RUF Interim Leader to say that he would disarm but "not do it in reality".), 6787 ("[Taylor] provided ongoing advice and guidance to the RUF leadership and had significant influence over the RUF and AFRC . . . .").

1535 *See* Taylor Appeal, paras 527, 534, 571, 583.

1536 Trial Judgment, paras 5837, 5838, 5840, 5841, 6910.

1537 Trial Judgment, paras 5828-5834, 5835(xxxix)(xl), 5842, 6913, 6914. *See* generally Trial Judgment, paras 5528-5753 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused), 5754-5834 (Arms and Ammunition: Other Sources of Materiel), 5835-5842 (Arms and Ammunition: Summary of Findings and Conclusion). In addition, see the Trial Chamber's discussion and assessment of the specific factual circumstances for each occasion on which Taylor provided materiel to the RUF/AFRC. The Defence proposed at trial and the Trial Chamber agreed that the effect of arms and ammunition provided by Taylor could be determined by assessing the relative importance of Taylor as a source of materiel to the RUF/AFRC. Trial Judgment, paras 5530, 5754, 5755, 6913.

1538 Trial Judgment, paras 5828-5834, 5842, 6914. *See, e.g.*, Trial Judgment, paras 4803-4854 (Ammunition Supply from Daniel Tamba), 4855-4965 (Deliveries of Materiel from Taylor to Sierra Leone), 4966-5031 (Trips by Bockarie to Liberia in 1998), 5111-5130 (Shipment brought back by Dauda Aruna Fornie), 5131-5163 (Deliveries from Taylor), 5196-5224 (Trips by Issa Sesay in Second Half of 2000 to 2001), paras 5225-5252 (Trips by Issa Sesay's Subordinates).

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1539 Trial Judgment, paras 5829, 6914. *See* Trial Judgment, paras 5349-5409 (Magburaka Shipment), 5531-5560 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: The AFRC Coup in May 1997 to the Retreat from Freetown in February 1998). The Burkina Faso Shipment was also facilitated by Taylor following Bockarie's request. Trial Judgment, para. 5514.

1540 Trial Judgment, para. 5828-5834, 5835(xxxix)(xl), 5842, 6914. The RUF/AFRC was short of ammunition after the ECOMOG Intervention through 1998 until the Burkina Faso Shipment, and the RUF/AFRC did not capture or obtain from other sources much materiel during this period. Trial Judgment, paras 5819, 5823, 5826. Throughout this period the RUF/AFRC directed widespread and systematic attacks against the civilian population in the implementation of its Operational Strategy. *See* further Trial Judgment, paras 5531-5560 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: The AFRC Coup in May 1997 to the Retreat from Freetown in February 1998), 5561-5593 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Operations in Kono in early 1998), 5594-5632 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Fitti-Fatta in mid-1998), 5633-5667 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: Operations in the North).

1541 Trial Judgment, paras 5514, 5841. *See* Trial Judgment, paras 5410-5527 (Arms and Ammunition: Allegations that the Accused Facilitated Supplies: Burkina Faso Shipment), 5668-5721 (Arms and Ammunition: Use of Materiel Supplied or Facilitated by the Accused: The December 1998 Offensives and the Freetown Invasion).

1542 Trial Judgment, paras 5828-5834, 5835(xl), 5842, 6914.

1543 Trial Judgment, paras 5812, 5823, 5826-5828, 5833, 5835(xxxix), 5842. *See* also Trial Judgment, para. 5833 ("The Trial Chamber finds beyond reasonable doubt that these alternative sources of materiel were of minor importance in comparison to that supplied or facilitated by [Taylor]."). *See* generally Trial Judgment, paras 5754-5831 (Arms and Ammunition: Other Sources of Materiel). The Defence conceded that the three main sources of arms and ammunition for the RUF/AFRC during the Indictment Period were (i) the Magburaka Shipment, (ii) the Burkina Faso Shipment and (iii) the materiel captured from ECOMOG in December 1998. Trial Judgment, para. 5809. The Trial Chamber assessed the importance of other sources of materiel: (i) the stockpiles of arms and ammunition held by the Junta government; (ii) captured materiel from ECOMOG and other pro-government sources; (iii) trade with ULIMO and sources in Guinea; (iv) captured materiel from UN peacekeepers in May 2000.

1544 Taylor Appeal, paras 462-475, 586.

1545 *See* generally Trial Judgment, paras 3472-3477 (Joint RUF/AFRC attempts to re-enter Freetown).

1546 Trial Judgment, para. 5712. *See* also *supra* para. 333, fn. 1010. The Trial Chamber found that materiel supplied or facilitated by Taylor often contributed to and was causally linked to the capture of supplies by the RUF/AFRC. With respect to the use of arms and ammunition on the outskirts of Freetown and in the Western Area *after the retreat from Freetown*, materiel from among three possible sources—the Burkina Faso Shipment, the provision of ammunition to Dauda Aruna Fornie during the Freetown Invasion and materiel captured from ECOMOG—was distributed to the RUF/AFRC forces and used during attacks in the course of the RUF/AFRC's attempts to recapture Freetown. While the Burkina Faso Shipment and the materiel brought by Fornie were supplied by Taylor, the Defence argued at trial that the materiel captured from ECOMOG was not. The Defence accordingly argued that it was not possible to establish that materiel provided by Taylor was used by the RUF/AFRC troops in the commission of crimes, and that any effect of the materiel from the Burkina Faso Shipment on the associated atrocities in or around Freetown after the retreat from Freetown was too remote in time and place in light of the use of captured materiel. However, Issa Sesay admitted in his testimony that without the Burkina Faso Shipment, the RUF/AFRC would not have launched its initial operations on Kono, and that without taking Kono, the RUF/AFRC would not have had the materiel necessary to attack other areas. The Trial Chamber therefore considered that the Burkina Faso Shipment was causally critical to the success of the Kono operation and to the capture of materiel in the operations in Kono, and that as a result "the materiel captured in the operations in Kono [was] directly referable to the materiel from the Burkina Faso shipment." Trial Judgment, paras 5702-5716, 5721, 5824-5827, 5830, 5842. While the Defence argues that the capture of this materiel was not foreseeable in light of a variety of factors, this submission is undeveloped as a matter of law, and unsupported and contrary to the evidence as a matter of fact, since the Bockarie/Taylor Plan envisaged an attack on Kono followed by a movement to Freetown, which is in fact what occurred. *See* Trial Judgment, paras 3129, 6959. *Contra* Taylor Appeal, para. 470.

1547 Trial Judgment, paras 5715, 5721.

1548 Trial Judgment, para. 5715.

1549 Materiel provided by Taylor "formed part of the overall supply of materiel" used by the RUF/AFRC in its activities, including the commission of crimes, during 1999, 2000 and 2001. During these periods, the RUF/AFRC continued to commit crimes, even though it was not necessarily engaged in military operations. The evidence was not sufficiently precise to establish conclusively that the materiel supplied by Taylor was used to commit these crimes or used in specific locations. There were alternative sources of supply available during these periods, and there was evidence that some of the materiel provided by Taylor was never used. Nonetheless, given the nature of the crimes committed and activities conducted and that they necessarily involved the use of arms and ammunition, the Trial Chamber was satisfied that the supplies provided by Taylor were part of the overall supply of materiel used by the RUF/AFRC in its activities, including the commission of crimes. Trial Judgment, paras 5743-5745, 5750-5753.

1550 Trial Judgment, para. 6913. As the accused's culpable assistance need not be the "but for" cause of the crime, in recognition of the fact that international crimes are often "over-determined", it follows that multiple actors may be reasonably found to have a substantial effect on the commission of the crime. *See Blaškić* Appeal Judgment, para. 48; *Simić* Appeal Judgment, para. 85. *See, e.g., Simić* Appeal and *Simić et al.* Trial Judgments (multiple accused were found to have had a substantial effect the commission of the same crimes). The post-Second World War tribunals also found multiple accused guilty for assisting the same crimes. *See, e.g.*, *Ministries* Case, *Pohl* Case, *Einsatzgruppen* Case, *Justice* Case, *Becker, Weber and 18*

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Others Case, *Rohde* Case.

1551 Trial Judgment, paras 5828-5834, 5842, 6913, 6914. *See* generally Trial Judgment, paras 5754-5831 (Arms and Ammunition: Other Sources of Materiel).

1552 *Sesay et al*. Appeal Judgment, para. 769; *Fofana and Kondewa* Appeal Judgment, para. 75. *Accord Ntawukulilyayo* Appeal Judgment, para. 214; *Lukić and Lukić* Appeal Judgment, para. 468; *Blagojević and Jokić* Appeal Judgment, para. 134.

1553 Taylor Appeal, paras 607, 608, 646, 649, 652-654, 658, 665.

1554 *See supra* 362-385.

1555 Trial Judgment, paras 5741-5743.

1556 Trial Judgment, para. 5744. *See supra* paras 260-273.

1557 Trial Judgment, para. 4262.

1558 Trial Judgment, paras 4252, 4262, 6928, 6936. *See* generally Trial Judgment, paras 3667-3731 (Operational Support: Communications Support: Satellite Phones).

1559 Trial Judgment, paras 4254, 4262, 6929, 6936. *See* generally Trial Judgment, paras 3622-3914 (Operational Support: Communications).

1560 Trial Judgment, paras 4255, 4262, 6930, 6936. *See* generally Trial Judgment, paras 3887-3914 (Operational Support: Communications: Use of Liberian Communication by the RUF: "448" Warnings).

1561 Trial Judgment, paras 4261, 4262, 6933, 6936. *See* generally Trial Judgment, paras 4194-4247 (Operational Support: Provision of RUF Guesthouse in Monrovia).

1562 Trial Judgment, para. 5834, 5835(xl), 5842, 6913-6915.

1563 *See supra* paras 261-263.

1564 Trial Judgment, para. 4256, 4262, 6934, 6936. *See* generally, Trial Judgment, paras 3915-3918 (Operational Support: Logistical Support).

1565 Trial Judgment, paras 4619, 4620, 6919. *See* generally Trial Judgment, paras 4266-4396 (Provision of Military Personnel: Red Lion Battalion), 4397-4495 (Military Personnel: Scorpion Unit).

1566 Trial Judgment, para. 6923.

1567 Trial Judgment, paras 4491, 6922.

1568 The Trial Chamber further found that Taylor provided goods, safe haven, financial assistance, safe-keeping for diamonds, medical support and herbalists to the RUF/AFRC, and returned RUF deserters, and that these forms of support also supported, sustained and enhanced the functioning of the RUF/AFRC and its capacity to undertake military operations in the course of which crimes were committed. Trial Judgment, paras 6925-6937.

1569 Trial Judgment, para. 4068.

1570 Taylor Appeal, paras 613-622 (safe haven and deserters), 673 (herbalist), 682-686 (medical support), 691-696 (financial support), 706-708 (safe-keeping of diamonds).

1571 Taylor Appeal, para. 642.

1572 *Blaškić* Appeal Judgment, para. 48; *Simić* Appeal Judgment, para. 85; *Blagojević and Jokić* Appeal Judgment, para. 134; *Brđanin* Appeal Judgment, para. 348; *Furundžija* Trial Judgment, para. 233. On causation in international criminal law, see J. Stewart, *Overdetermined Atrocities*.

1573 Trial Judgment, para. 6940. *See* generally Trial Judgment, paras 3611-3618 (Military Operations: Summary of Findings and Conclusion), 6451-6458 (Peace Process: Summary of Findings and Conclusion), 6767-6787 (Leadership and Command Structure: Summary of Findings and Conclusions).

1574 *See, e.g.*, Trial Judgment, paras 2863, 2951, 4105, 4259, 6345, 6414.

1575 Trial Judgment, para. 3613. In February 1998, Taylor gave Johnny Paul Koroma two instructions to capture Kono, which led to the ultimate recapture of Koidu Town in late February/early March 1998. In February/March 1998, Taylor told Sam Bockarie to be sure to maintain control of Kono for the purpose of trading diamonds with him for arms and ammunition. In mid-June 1998, Taylor advised Bockarie to recapture Kono so that the diamonds there would be used to purchase arms and ammunition, which resulted in the Fitti-Fatta attack in mid-June 1998. Before the Freetown Invasion, Taylor emphasised to Bockarie the importance of attacking Kono due to its diamond wealth, and the RUF/AFRC captured Kono in the course of the attack on Freetown. Trial Judgment, paras 2863, 2864, 2951, 3112. *See* generally Trial Judgment, paras 2754-2769 (Military Operations: Alleged Message from Base 1 to Troops Retreating from Kono), 2770-2864 (Military Operations: Operations in Kono (Early 1998)), 2865-2951 (Military Operations: Operation Fitti-Fatta), 2952-3130 (Military Operations: The Freetown Invasion: The Plan).

1576 *See supra* paras 279-284.

1577 Trial Judgment, paras 6443, 6447-6449. *See* generally Trial Judgment, paras 6416-6450 (Peace Process: Communication with Issa Sesay on Disarmament).

1578 *See, e.g.,* Trial Judgment, paras 6663 (finding that Taylor "ordered Bockarie to send AFRC/RUF forces to assist him in his fight against Mosquito Spray and the LURD forces that had attacked his forces, and that during the fighting, the AFRC/RUF forces operated under the overall command of [Taylor's] Liberian subordinates."), 6728 (finding that "in 2000 and 2001 [Taylor] instructed Issa Sesay to send RUF forces, and that the RUF forces sent in response to these requests fought alongside AFL forces in Liberia and Guinea under the command of [Taylor's] subordinates."). *See* generally Trial Judgment, paras 6617-6663 (Leadership and Command Structure: Operations Outside Sierra Leone: RUF/AFRC against Mosquito Spray/LURD in Liberia, 1999), 6664-6728 (Leadership and Command Structure: Operations Outside Sierra Leone: Operations in Liberia and Guinea during Issa Sesay's leadership).

1579 Trial Judgment, para. 6945.

1580 Trial Judgment, para. 6768.

1581 Trial Judgment, para. 3613. *See* generally Trial Judgment, paras 3611-3618 (Military Operations: Summary of Findings and Conclusion).

1582 Trial Judgment, para. 3130. *See* generally Trial Judgment, paras 2952-3130 (Military Operations: The Freetown Invasion: The Plan).

1583 Trial Judgment, para. 6520.

1584 Trial Judgment, para. 6543.

1585 Trial Judgment, paras 6442, 6444, 6447, 6449, 6450, 6451(xi), 6458, 6785. *See* generally Trial Judgment, paras 6416-6450 (Peace Process: Communication with Issa Sesay on Disarmament).

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1586 Trial Judgment, paras 6419, 6442, 6443, 6451(xi), 6458, 6785.

1587 Trial Judgment, para. 6949.

1588 Trial Judgment, para. 6951.

1589 Trial Judgment, para. 6952.

1590 *See supra* paras 303-343.

1591 Taylor Appeal, paras 405-407.

1592 Taylor Appeal, paras 402, 408.

1593 Taylor Appeal, paras 416, 417.

1594 Taylor Appeal, paras 419, 423-427. *See* also Taylor Appeal, para. 427 ("Taylor provided the materiel to assist the RUF to hold its positions; to avoid cataclysmic defeat that would have led to its further disintegration with potential negative consequences for peace; and to consolidate its position without a repetition of the crimes committed against civilians during its flight from ECOMOG forces.").

1595 Taylor Appeal, para. 430. *See* also Taylor Appeal, paras 416, 417.

1596 Taylor Appeal, paras 436, 437.

1597 Taylor Appeal, para. 437.

1598 Prosecution Response, paras 323, 343.

1599 Prosecution Response, para. 345, *citing* Trial Judgment, paras 6805, 6884, 6969.

1600 Prosecution Response, paras 357, 358.

1601 Prosecution Response, paras 349-351.

1602 Prosecution Response, para. 363.

1603 Prosecution Response, para. 368.

1604 Prosecution Response, para. 371.

1605 Prosecution Response, para. 372.

1606 Taylor Reply, para. 63.

1607 Taylor Reply, para. 65.

1608 Taylor Reply, para. 66.

1609 *Brima et al.* Appeal Judgment, para. 242, *quoting Brima et al.* Trial Judgment, para. 776; *Fofana and Kondewa* Appeal Judgment, paras 366-367; *Sesay et al.* Appeal Judgment, para. 546.

1610 Taylor Appeal, paras 401, 402, 404-409.

1611 Trial Judgment, para. 6884.

1612 Trial Judgment, para. 6877.

1613 Trial Judgment, para. 6886.

1614 Trial Judgment, para. 6885.

1615 *See* Trial Judgment, para. 6947.

1616 Trial Judgment, para. 6949. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused).

1617 Taylor Appeal, para. 407.

1618 *Sesay et al.* Appeal Judgment, paras 32, 40.

1619 Taylor Appeal, para. 427.

1620 Trial Judgment, para. 3130.

1621 *See* Prosecution Response, paras 361-364.

1622 *See* Taylor Appeal, paras 416, 417.

1623 *See supra* paras 253-302.

1624 Trial Judgment, para. 6949. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused).

1625 *See* Trial Judgment, paras 6455-6458. *See* generally Trial Judgment, paras 6451-6458 (Peace Process: Summary of Findings and Conclusion).

1626 Trial Judgment, para. 6452.

1627 Trial Judgment, para. 6455.

1628 Trial Judgment, para. 6455. *See* generally Trial Judgment, paras 6416-6450 (Peace Process: Communication with Issa Sesay on Disarmament).

1629 Trial Judgment, para. 6884. *See* also Trial Judgment, para. 6805, *citing* Transcript, Charles Ghankay Taylor, 25 November 2009, p. 32395.

1630 *Contra* Taylor Appeal, para. 416.

1631 *See* Trial Judgment, para. 6877.

1632 Trial Judgment, paras 6882, 6885, 6949. *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused).

1633 *Contra* Taylor Appeal, paras 436, 437.

1634 Trial Judgment, para. 6952.

1635 *See supra* paras 46-252.

1636 *Supra* 491-494.

1637 Taylor Appeal, paras 217-219 (Ground 11), 287 (Ground 13), 306 (Ground 15), 557-558 (Ground 23).

1638 Trial Judgment, para. 6968.

1639 *See supra* paras 285-292, 327-334.

1640 Trial Judgment, para. 6958. *See* generally Trial Judgment, paras 2952-3130 (Military Operations: The Freetown Invasion: The Plan).

1641 Trial Judgment, paras 3130, 3611(vii).

1642 Trial Judgment, para. 3126.

1643 Trial Judgment, para. 3123.

1644 Trial Judgment, para. 3124, *citing* Defence Final Trial Brief, para. 919.

1645 Trial Judgment, para. 3125.

1646 Trial Judgment, paras 3481, 3486, 3611(viii, xiii).

1647 Trial Judgment, paras 3370, 3480, 6965.

1648 Trial Judgment, para. 3393.

1649 Trial Judgment, paras 3481, 3611(viii).

1650 Trial Judgment, para. 6965.

1651 Trial Judgment, paras 3482, 3611(ix).

1652 Trial Judgment, paras 3481, 3611(viii).

1653 Trial Judgment, para. 6965.

1654 Trial Judgment, para. 3606, 3611(xiv).

1655 Trial Judgment, para. 6968.

1656 Taylor Appeal, para. 208. The Defence suggests that "[t]he *actus reus* of planning is 'one or more persons formulate a method of design or action, procedure or arrangement of the accomplishment of a particular crime.'" Taylor Appeal, para. 209.

1657 Taylor Appeal, paras 254, 255, 259.

1658 Taylor Appeal, para. 276. *See, e.g.*, *Orić* Trial Judgment, para. 706.

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1659 Taylor Appeal, para. 202.

1660 Taylor Appeal, para. 188.

1661 Taylor Appeal, paras 216, 252.

1662 Taylor Appeal, para. 286.

1663 Prosecution Response, para. 184, *citing* Trial Judgment, paras 6958, 6959.

1664 Prosecution Response, para. 167.

1665 Prosecution Response, para. 167, *citing* Trial Judgment, paras 3481-3486, 6965.

1666 Prosecution Response, para. 167.

1667 Prosecution Response, paras 226-232.

1668 Prosecution Response, para. 193.

1669 Taylor Reply, para. 28.

1670 Taylor Reply, para. 29.

1671 Taylor Reply, para. 35, *citing* Trial Judgment, para 6965 (emphasis omitted).

1672 *Supra* 491-494.

1673 *Supra* 491-494.

1674 *Sesay et al.* Appeal Judgment, para. 769.

1675 Trial Judgment, paras 6958, 6959, 6969. *See* also *supra* para. 282.

1676 Trial Judgment, para. 6994. The Appeals Chamber notes that the Trial Chamber did not convict Taylor of planning liability for any crimes committed by the forces under the command of SAJ Musa/Gullit prior to 23 December 1998, during their movement from the North to Freetown. *See* Trial Judgment, para. 6994 (named Districts under each Count). As the Trial Chamber expressly reasoned, the critical issue to Taylor's planning conviction for crimes committed after 23 December 1998 on the outskirts of and in Freetown was whether, following SAJ Musa's death and Gullit's assumption of command, Bockarie was effectively in command of a concerted and coordinated effort to capture Freetown, with Gullit as his subordinate. It concluded that this was the case. Trial Judgment, para. 3479. *See* also Trial Judgment, paras 3481-3486, 3617. Likewise, the Appeals Chamber affirms Taylor's planning conviction under Count 9 for Bombali District for crimes committed by RUF/AFRC forces under Bockarie's command. *See infra* paras 569-574. The Appeals Chamber emphasises that the convictions and Disposition must be read in conjunction with and in light of the Trial Chamber's findings as to the crimes properly charged in the Indictment and proved beyond reasonable doubt.

1677 Taylor Appeal, para. 253, *citing* Trial Judgment, para. 3479. *See supra* paras 285-292, 327-334. The Trial Chamber considered that Taylor's planning liability for the crimes committed in Freetown depended on whether, following SAJ Musa's death and Gullit's assumption of command, Bockarie was effectively in command of a concerted and coordinated effort to capture Freetown, with Gullit as his subordinate. It concluded that this was the case. Trial Judgment, para. 3479. *See* also Trial Judgment, paras 3481-3486, 3617. *See* generally Trial Judgment, paras 3131-3486 (Military Operations: The Freetown Invasion: Implementation of the Plan).

1678 *Contra* Prosecution Response, para. 231.

1679 *Sesay et al.* Appeal Judgment, para. 1111. The Appeals Chamber rejected similar arguments by the Prosecution on appeal.

1680 Taylor Appeal, paras 271-274.

1681 Trial Judgment, para. 6965. *See* generally Trial Judgment, 3379-3393 (Relationship between Bockarie and Gullit prior to the death of SAJ Musa), 3394-3401 (Resumption of communications after the death of SAJ Musa), paras 3419-3435 (Attempts at coordination and the entry into Freetown of Rambo Red Goat), 3436-3464 (Whether fighters in Freetown took orders from Bockarie). The Defence conceded that Gullit resumed contact with Bockarie after SAJ Musa's death. Trial Judgment, para. 3394. While Gullit was with SAJ Musa, he maintained contact with Bockarie and would update Bockarie and Bockarie's commanders on operational matters. Trial Judgment, paras 3385, 3386, 6755. The Trial Chamber was "satisfied that nothing suggests that the relationship between Bockarie and Gullit had broken down so irretrievably that it prevented Bockarie and Gullit from working together after the death of SAJ Musa. Trial Judgment, para. 3393.

1682 *See* generally Trial Judgment, 3379-3393 (Relationship between Bockarie and Gullit prior to the death of SAJ Musa), 3394-3401 (Resumption of communications after the death of SAJ Musa).

1683 Trial Judgment, para. 3395.

1684 Trial Judgment, para. 3396.

1685 Trial Judgment, para. 3397.

1686 Trial Judgment, para. 3398.

1687 Trial Judgment, para. 3394. *See* generally Trial Judgment, paras 3394-3401 (Resumption of communications after the death of SAJ Musa), 3402-3418 (Gullit's failure to heed Bockarie's instruction to wait for reinforcements).

1688 Trial Judgment, para. 3409.

1689 Trial Judgment, para. 3410.

1690 Trial Judgment, para. 3413. While Gullit proceeded into Freetown before Bockarie's reinforcements arrived, the Trial Chamber was satisfied that Gullit did so due to military exigencies and because the reinforcements were unduly delayed, and noted the evidence that Gullit proceeded into Freetown only once he knew that Issa Sesay's forces were on their way from Makeni and were in a position to block ECOMOG reinforcements to Freetown. Trial Judgment, paras 3409, 3410, 3413, 3414.

1691 Trial Judgment, para. 3417.

1692 Trial Judgment, para. 3418. *See* generally Trial Judgment, paras 3402-3418 (Gullit's failure to heed Bockarie's instruction to wait for reinforcements). While in Freetown, Gullit requested additional ammunition from Bockarie, who then sent a request to Benjamin Yeaten. Fornie then went on Bockarie's behalf to White Flower, where he obtained ammunition, RPGs and grenades. After Fornie's return to Buedu, the ammunition was then sent to RUF/AFRC forces in Waterloo via Issa Sesay in Makeni. Trial Judgment, paras 5113, 5114, 5123-5129.

1693 Trial Judgment, para. 3398. *See* generally Trial Judgment, 3394-3401 (Resumption of communications after the death of SAJ Musa), paras 3887-3914 (Operational Support: Communications: Use of Liberian Communication by the RUF: "448" Warnings).

1694 Trial Judgment, para. 3478.

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1695 Trial Judgment, paras 3452 ("The Trial Chamber is satisfied, on the strength of the Prosecution evidence, that Bockarie did direct Gullit to use terror tactics against the civilian population on the retreat from Freetown, and that Gullit complied."), 3457 ("The Trial Chamber is satisfied . . . that Bockarie did direct Gullit to send high-profile political detainees released from Pademba Road Prison to RUF-controlled territory and Gullit complied with that instruction."), 3463 ("The Trial Chamber is satisfied, on the Prosecution evidence, that Bockarie gave Gullit orders to execute Martin Moinama, and a group of captured ECOMOG soldiers near the State House, and both of which orders were carried out by Gullit." *See* generally Trial Judgment, paras 3445-3452 (instruction to use terror tactics against the civilian population on the retreat from Freetown), 3453-3457 (instruction to send high-profile political detainees released from Pademba Road Prison to RUF-controlled territory), 3458-3463 (instructions to execute Martin Moinama and a group of captured ECOMOG soldiers near the State House).

1696 *See supra* paras 285-292.

1697 Taylor Appeal, para. 187.

1698 Contrary to the Defence submissions in paragraph 188 of its Appeal, the Trial Chamber was not obliged to distinguish SAJ Musa's separate plan from the Bockarie/Taylor Plan in terms of strategy, timing, troop movements, intelligence, locations, operational plans or manoeuvres.

1699 Trial Judgment, para. 3124, *citing* Defence Final Trial Brief, para. 919.

1700 Trial Judgment, paras 3130, 3611(vii), 6958, 6959.

1701 Trial Judgment, para. 3123.

1702 Trial Judgment, para. 3449.

1703 Trial Judgment, paras 6965, 6968.

1704 Taylor Appeal, paras 219, 252.

1705 Trial Judgment, paras 6965, 6968.

1706 S*upra* para. 552.

1707 *Supra* paras 522, 525.

1708 Trial Judgment, paras 3445-3452.

1709 Trial Judgment, para. 6970.

1710 Trial Judgment, para. 6885.

1711 Trial Judgment, para. 6969.

1712 *See supra* paras 327-334.

1713 Taylor Appeal, paras 296, 297.

1714 Prosecution Response, para. 236.

1715 *Supra* para. 494.

1716 *Supra* para. 494.

1717 *See* generally Trial Judgment, paras 6794-6886 (Knowledge of the Accused). In the heading of Ground 15, which pertains to Taylor's *mens rea* for planning, the Defence states that the Trial Chamber "erred in fact and law in . . . in relying on [Taylor's "fearful" and use "all means" instructions] to infer that Charles Taylor possessed the requisite mental elements for planning." However, in Ground 15 the Defence merely puts forward arguments which challenge the evidence relied on by the Trial Chamber in finding that these orders were actually given. The arguments contained in Defence Ground 15 make no reference to the Trial Chamber's reliance on "fearful" and use "all means" instructions to establish Taylor's *mens rea*.

1718 Trial Judgment, para. 6885.

1719 Trial Judgment, para. 6883. *Contra* Taylor Appeal, para. 293.

1720 Trial Judgment, para. 6969.

1721 Trial Judgment, para. 6995.

1722 Taylor Appeal, paras 217-219 (Ground 11), 287 (Ground 13), 306 (Ground 15), 557-558 (Ground 23).

1723 Prosecution Response, para. 190, fns 526-527.

1724 Taylor Reply, para. 30, fn. 101.

1725 Trial Judgment, para. 1540.

1726 Taylor Reply, fn. 101. *See* also Trial Judgment, para. 1538.

1727 Trial Judgment, paras 6962, 6968.

1728 Trial Judgment, para. 3369.

1729 Trial Judgment, para. 3369.

1730 Trial Judgment, para. 5717.

1731 Trial Judgment, para. 6962.

1732 Trial Judgment, para. 5717.

1733 Trial Judgment, para. 6994.

1734 *Sesay et al.* Appeal Judgment, para. 344.

1735 *Sesay et al.* Appeal Judgment, para. 344.

1736 *Sesay et al.* Appeal Judgment, para. 345.

1737 *See Sesay et al.* Appeal Judgment, para. 694. The Appeals Chamber recalls that the Trial Chamber did not convict Taylor of planning liability for any crimes committed by the forces under the command of SAJ Musa/Gullit prior to 23 December 1998, during their movement from the North to Freetown.

1738 This reversal does not contradict or detract from the fact that the Appeals Chamber has affirmed the Trial Chamber's conviction of Taylor for any and all of the same crimes committed by the RUF/AFRC in Kono District in all eleven Counts. Taylor is guilty of aiding and abetting the commission of each of these crimes as part of the RUF/AFRC's widespread and systematic attack on the civilian population in the implementation of its Operational Strategy. However, because of the Trial Chamber's failure to provide reasoning as to why Taylor, by designing the Bockarie/Taylor Plan, incurred *planning* liability for these crimes, the Trial Chamber's conclusion is not supported.

1739 The Defence challenges fail on the merits. With respect to the enslavement of civilians (Count 10) in Kono District, the Trial Chamber found that civilians were forced to carry materiel provided by Taylor for the military offensives from Buedu to Koidu Town during the implementation of the Bockarie/Taylor Plan. Trial Judgment, paras 1768, 1769. With respect to the conscription and use of child soldiers (Count 9) in Kono District, the Trial Chamber found that children under the age of 15 years were conscripted by the RUF/AFRC in Kono at the end of December 1998 and that the y were used by the RUF/AFRC for military purposes such as participating actively in hostilities by fighting at the frontlines and acting as armed bodyguards to commanders, taking part in armed food-finding missions and carrying loads, including arms and ammunition. Trial Judgment, paras 1968, 5717. With respect to the use of child soldiers (Count

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9) in Makeni, the Appeals Chamber is of the view that the Trial Chamber reasonably found that the crime occurred in the implementation of the Bockarie/Taylor Plan, as the victim testified that during the attack on Makeni he was part of Superman's forces, which were part of the forces commanded by Bockarie at the time of the implementation of the Plan. *See* Trial Judgment, paras 1537-1539, 5717.

1740 Trial Judgment, para. 6989.

1741 Trial Judgment, para. 6989.

1742 Taylor Appeal, paras 822-824.

1743 Prosecution Response, para. 718.

1744 Prosecution Response, paras 723-725, *citing Kunarac et al.* Appeal Judgment, para. 186.

1745 Taylor Reply, para. 113.

1746 *Sesay et al.* Appeal Judgment, paras 1192, 1197; *Fofana and Kondewa* Appeal Judgment, para. 220.

1747 *Sesay et al.* Appeal Judgment, para. 1190.

1748 *See* Prosecution Appeal, paras 16, fn. 23 (the "Instructed Crimes" for which the Prosecution argues an ordering conviction should be entered), 92, fn. 272 (the crimes for which Taylor was convicted and for which the Prosecution argues an instigating conviction should also be entered).

1749 Trial Judgment, paras 474-477 (internal citations omitted).

1750 Trial Judgment, paras 471-473 (internal citations omitted).

1751 Trial Judgment, para. 6972.

1752 Trial Judgment, para. 6973.

1753 Prosecution Appeal, paras 18-22.

1754 Prosecution Appeal, paras 21, 22.

1755 *See* Prosecution Appeal, para. 25 ("Regardless of the ultimate conclusions the Trial Chamber reached, the underlying findings it made were themselves proof that Mr. Taylor was guilty of ordering crimes charged in the Indictment.").

1756 Prosecution Appeal, paras 25-38.

1757 Prosecution Appeal, paras 27-35.

1758 Prosecution Appeal, paras 36, 37.

1759 Prosecution Appeal, paras 65-68.

1760 Prosecution Appeal, paras 77-82.

1761 Prosecution Appeal, para. 78, *citing Brima et al.* Appeal Judgment, para. 215; *Rutaganda* Appeal Judgment, para. 580.

1762 Prosecution Appeal, para. 81, *citing Ndindabahizi* Appeal Judgment; *Akayesu* Appeal Judgment; *Kalimanzira* Trial Judgment; *Gatete* Trial Judgment; *Gacumbitsi* Appeal Judgment; *Kamuhanda* Trial Judgment; *Kajelijeli* Appeal Judgment; *Boškoski and Tarčulovski* Appeal Judgment; *Brđanin* Appeal Judgment; *Kordić and Čerkez* Appeal Judgment. *See* also Prosecution Appeal, para. 71.

1763 Prosecution Appeal, paras 83-98.

1764 Prosecution Appeal, paras 72, 79.

1765 Prosecution Appeal, para. 69.

1766 Prosecution Appeal, paras 72, 100.

1767 Taylor Response, para. 14.

1768 Taylor Response, paras 20-28.

1769 Taylor Response, para. 22.

1770 Taylor Response, paras 31-46.

1771 Taylor Response, para. 47.

1772 Taylor Response, para. 51. *See* also Taylor Response, paras 52-55.

1773 Taylor Response, para. 55.

1774 Taylor Response, paras 56-77.

1775 *Supra* para. 395, fn. 1238.

1776 *See supra* paras 413-438. *Accord Kordić and Čerkez* Appeal Judgment, paras 29-32.

1777 Trial Judgment, paras 471-481.

1778 *Supra* paras 507-526, 533-540, 550-561, 564-566.

1779 *See, e.g.*, Trial Judgment, para. 6945.

1780 *See* Sentencing Judgment, para. 96.

1781 *Brima et al.* Appeal Judgment, para. 216.

1782 *Sesay et al.* Appeal Judgment, para. 1229; *Fofana and Kondewa* Appeal Judgment, para. 546. *See* further *infra*, paras 661-670.

1783 *Fofana and Kondewa* Appeal Judgment, paras 552, 561.

1784 *Fofana and Kondewa* Appeal Judgment, para. 531.

1785 *Sesay et al.* Appeal Judgment, para. 1235.

1786 *Accord Kunarac et al.* Appeal Judgment, paras 169-174. *Cf. Čelibići* Appeal Judgment, Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, paras 22, 23, 27, 37-39, 45.

1787 *Sesay et al.* Appeal Judgment, para. 1229; *Fofana and Kondewa* Appeal Judgment, para. 546.

1788 Trial Judgment, para. 6946.

1789 Trial Judgment, paras 6947-6952, 6969, 6970.

1790 *See supra* paras 436-440.

1791 Trial Judgment, paras 6907-6937.

1792 Trial Judgment, paras 6958-6968.

1793 Trial Judgment, para. 6520.

1794 Trial Judgment, para. 6449.

1795 Sentencing Judgment, para. 76.

1796 Sentencing Judgment, para. 78.

1797 Sentencing Judgment, para. 76.

1798 Sentencing Judgment, para. 76.

1799 Sentencing Judgment, para. 71.

1800 Sentencing Judgment, para. 77.

1801 *See* Sentencing Judgment, para. 96.

1802 Taylor Appeal, paras 711, 714, 718.

1803 *Brima et al.* Decision on Brima-Kamara Defence Appeal Motion against Re-Appointment, para. 102, *citing Pretto v. Italy* (A/71): (1984) 6 E.H.R.R. p. 182.

1804 *Sesay et al.* Appeal Judgment, para. 34. *Accord Renzaho* Appeal Judgment, para. 140, *citing Krajišnik* Appeal Judgment, para. 28; *Kordić and Čerkez* Appeal Judgment para. 119.

1805 *Taylor* Order Assigning a Case to a Trial Chamber.

1806 *Taylor* Order Designating Alternate Judge.

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1807 Transcript, 4 June 2007.

1808 Transcript, 11 March 2011.

1809 Transcript, 25 February 2011, pp. 49316-49318.

1810 SCSL Press Release, 16 December 2011.

1811 *Taylor* Scheduling Order for Delivery of Judgment.

1812 Transcript, 16 May 2012, pp. 49680-49734.

1813 Transcript, 16 May 2012, pp. 49734.

1814 Trial Judgment, p. 2473; Sentencing Judgment p. 40.

1815 Transcript, 16 May 2012, pp. 49682-49683.

1816 Defence Motion to Admit Additional Evidence Pursuant to Rule 115, Public Annex C.

1817 Taylor Appeal, para. 757.

1818 Taylor Notice of Appeal, Ground 36. *See* also Taylor Appeal, para. 710

1819 Taylor Appeal, paras 711, 717; Taylor Reply, para. 88.

1820 Prosecution Response, para. 647.

1821 Prosecution Response, para. 640.

1822 Prosecution Response, para. 648.

1823 Prosecution Response, para. 644.

1824 Prosecution Response, para. 643.

1825 Prosecution Response, para. 642.

1826 Prosecution Response, para. 642.

1827 Prosecution Response, para. 642.

1828 Prosecution Response, para. 642.

1829 Prosecution Response, para. 641.

1830 Taylor Appeal, para. 731.

1831 Taylor Appeal, para. 738.

1832 Taylor Appeal, para. 739.

1833 Taylor Appeal, para. 739.

1834 Taylor Appeal, paras 739-742.

1835 Taylor Appeal, para. 743.

1836 Taylor Appeal, para. 753.

1837 Taylor Appeal, para. 757.

1838 Prosecution Response, paras 654, 672.

1839 Prosecution Response, paras 656, 659.

1840 Prosecution Response, paras 662, 663.

1841 Prosecution Response, para. 664.

1842 Prosecution Response, para. 664.

1843 Taylor Appeal, para. 762.

1844 Taylor Appeal, para. 761.

1845 Taylor Appeal, paras 771-776. The Defence submits that "[i]n February 1998, prior to the completion of the *Celebici* case, Judge [Odio] Benito was elected as Second Vice President of Costa Rica . . . . [and that] prior to accepting the nomination as Vice President of Costa Rica, Judge Benito had given ample assurances to the President of the ICTY that she would not assume any of her duties as a Vice President until the case was completed."

1846 Taylor Appeal, paras 776-777. The Defence submits that "[i]n 2011, Judge Dennis Byron, then President of the ICTR . . . had been elected as President of the Caribbean Court of Justice . . . but the judgement in *Karemera* was [still] due to be delivered . . . [Judge Byron sent a letter in which he] guaranteed that . . . he would remain committed . . . to the work of the Tribunal . . . [and that there was no] conflict of interest."

1847 Taylor Appeal, para. 761; Taylor Reply, para. 97 (The Defence contends that Justice Sebutinde was required to undertake: "(i) that if elected as a Judge of the ICJ she would fulfil her judicial functions at the SCSL on a full-time basis, (ii) that the Judge would not assume any of her functions at the ICJ until completion of her tenure as a member of the Trial Chamber, (iii) that her duties at the ICJ would not be incompatible with her judicial duties at the SCSL, and (iv) that she would not to be diverted by anything from the fulfilment of their mandate at the SCSL.").

1848 Taylor Appeal, para. 761; Taylor Reply, para. 97.

1849 Taylor Appeal, para. 761; Taylor Reply, para. 97.

1850 Taylor Appeal, para. 769.

1851 Prosecution Response, para. 674.

1852 Prosecution Response, para. 675.

1853 Prosecution Response, para. 679.

1854 Prosecution Response, paras 679-681.

1855 Transcript, 4 June 2007.

1856 Transcript, 11 March 2011.

1857 Rule 75(A) provides: "A Judge or a Chamber may, on its own motion, or at the request of either party, or of the victim or witness concerned, or of the Witnesses and Victims Section, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused."

1858 *See* "Watch the Trial" *at* http://www.sc-sl.org.

1859 *Taylor* Scheduling Order for Delivery of Judgement.

1860 Transcript, 26 April 2004, p. 49676.

1861 Rule 16*bis*(A) and (D).

1862 Rule 16*bis*(B) (emphasis added).

1863 Rule 16*bis*(D).

1864 Taylor Appeal, para. 757.

1865 For the avoidance of doubt, this requirement relates to the binding and final judgment of the chamber, not to the consideration of the evidence and the parties' submissions made during the trial.

1866 *See, e.g.*, *Krajišnik* Appeal Judgment, para. 134; *Kvocka et al.* Appeal Judgment, para. 25; *Karadzić* Appeal Decision on Count 11 Preliminary Motion, para. 11.

1867 Rule 87(A) provides: "[T]he Trial Chamber shall deliberate in private."

1868 Rule 29 provides: "The deliberations of the Chambers shall take place in private and remain secret."

1869 *See, e.g.*, Agreement, Article 19.

1870 *See supra* paras 246-248.

1871 *See supra* paras 246-248.

1872 *Sesay et al.* Appeal Judgment, paras 344, 345 (holding that "[a] reasoned opinion ensures that the accused can exercise his or her right of appeal and that the Appeals Chamber can carry out its statutory duty under Article [20] to review these appeals").

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1873 Transcript, 26 April 2004, p. 49676. On 26 April 2012, in accordance with Rule 78, the Presiding Judge of Trial Chamber II delivered in public the "Trial Chamber['s] unanimous[. . .] find[ings]" in this case. The initials of all three of the voting members of the Trial Chamber appear at the bottom of each page of the Judgment. All three voting members of the Trial Chamber signed a formal, binding attestation at page 2473 of the Judgment. None of the three voting members of the Trial Chamber dissented from a finding, disagreed with the reasoning or issued a separate opinion.

1874 Rule 88(C) ("The judgement shall be rendered by a majority of the Judges. It shall be accompanied by a reasoned opinion in writing. Separate or dissenting opinions may be appended."); Rule 16(C) ("An alternate Judge shall be present during the deliberations of the Trial Chamber or the Appeals Chamber to which he or she has been designated but shall not be entitled to vote thereat."). The Alternate Judge did not have the authority to vote or to enter a separate opinion. However, even if he had, the outcome would have been the same, because the conviction would still have been rendered by a majority of three judges.

1875 *Taylor* Decision on Disqualification, para. 33.

1876 Taylor Appeal, paras 751, 752.

1877 The Statement was acknowledged on 16 May 2012. Transcript 16 May 2012, pp. 49682-49683. It was made part of the public record on appeal in 19 July 2012. *Taylor* Notice of Appeal. It was cited by the Appeals Chamber on 13 September 2012. *Taylor* Decision on Disqualification, para. 33. It was formally ruled part of the evidence on appeal on 18 January 2013. *Taylor* Decision on Taylor's Motion to Admit Additional Evidence Pursuant to Rule 115.

1878 *See, e.g.*, Taylor Appeal, paras 731, 743, 745, 746.

1879 *Taylor* Notice of Appeal (filed on July 19, 2012).

1880 *Taylor* Decision on Taylor's Motion to Admit Additional Evidence Pursuant to Rule 115.

1881 *Justice Thompson* Appeal Disqualification Decision, para. 10.

1882 *See, e.g.*, *Furundžija* Appeal Judgment, para. 174; *Čelebići* Appeal Judgment, para. 640.

1883 *Sesay et al.* Appeal Judgment, para. 34. *Accord Renzaho* Appeal Judgment, para. 140, *citing Krajišnik* Appeal Judgment para. 28; *Kordić and Čerkez* Appeal Judgment para. 119.

1884 Justice Sebutinde recused herself from participating in the Decision. *Taylor* Decision on Defence Rule 54 Motion, Declaration of Justice Julia Sebutinde.

1885 Rule 54 provides: "At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial."

1886 *Taylor* Decision on Defence Rule 54 Motion.

1887 *Taylor* Decision on Defence Rule 54 Motion, p. 2.

1888 *Taylor* Decision on Defence Rule 54 Motion, p. 6.

1889 *Taylor* Decision on Defence Rule 54 Motion, p. 7.

1890 *Taylor* Decision on Defence Rule 54 Motion, p. 7.

1891 Taylor Appeal, para. 781.

1892 Taylor Appeal, paras 782, 787-793.

1893 Taylor Appeal, para. 794.

1894 Prosecution Response, paras 689-698.

1895 Prosecution Response, para. 692.

1896 Prosecution Response, paras 694, 695.

1897 Taylor Reply, paras 103, 104. Article 15 of the Statute provides: "The Prosecutor shall act independently as a separate organ of the Special Court. He or she shall not seek or receive instructions from any Government or from any other source."

1898 Taylor Reply, para. 104 (emphasis in original).

1899 Taylor Appeal, para. 791. *See* also Taylor Reply, para. 104.

1900 *See Sesay et al.* Appeal Judgment, para. 189.

1901 Sentencing Judgment, Disposition.

1902 Defence Ground 42 states: "The Trial Chamber erred in fact and in law when it imposed on Charles Taylor a sentence of 50 years imprisonment, which is manifestly unreasonable in the circumstances of this case."

1903 The Defence contends that the Trial Chamber: (i) erred in failing to consider that serving a sentence abroad is a mitigating factor; (ii) erred in considering the extraterritoriality of Taylor's acts and conduct as an aggravating factor; (iii) erred in giving weight to Taylor's "breach of trust" as an aggravating factor; (iv) erred in failing to take into account the sentencing practices of the Special Court; (v) erred in failing to apply the general principle that aiding and abetting liability generally warrants a lesser sentence than that imposed for other forms of criminal participation; and (vi) erred by double-counting Taylor's position as Head of State as an aggravating factor.

1904 Prosecution Appeal, para. 190.

1905 Sentencing Judgment, para. 18.

1906 Sentencing Judgment, para. 19.

1907 Sentencing Judgment, para. 20.

1908 Sentencing Judgment, para. 21.

1909 Sentencing Judgment, para. 94.

1910 Sentencing Judgment, para. 100.

1911 Sentencing Judgment, para. 101.

1912 Prosecution Appeal, paras 224-227. *See* also Prosecution Reply, para. 86, *quoting* Sentencing Judgment, para. 21. ("[T]he Prosecution does not accept as a 'legal principle' the fact that 'aiding and abetting as a mode of liability generally warrants a lesser sentence than that to be imposed for more direct forms of participation.'").

1913 Appeal transcript, 22 January 2013, pp. 49870-49876.

1914 Appeal transcript, 22 January 2013, pp. 49870-49874, *quoting Fofana and Kondewa* Appeal Judgment, para. 546; Prosecution Appeal, para. 200.

1915 Appeal transcript, 22 January 2013, p. 49873.

1916 Appeal transcript, 22 January 2013, p. 49870.

1917 Appeal transcript, 22 January 2013, pp. 49875, 49876.

1918 Appeal transcript, 22 January 2013, p. 49873.

1919 Appeal transcript, 22 January 2013, p. 49872.

1920 Appeal transcript, 22 January 2013, p. 49872.

1921 Prosecution Appeal, paras 228-230, *discussing Vasiljević* Appeal Judgment, para. 182, *Muhimana* Trial Judgment,

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para. 593.

1922 Appeal transcript, 23 January 2013, p. 49969.

1923 Taylor Response, paras 146, 147, *citing* Sentencing Judgment, para. 21.

1924 Appeal transcript, 22 January 2013, p. 49927.

1925 Appeal transcript, 22 January 2013, p. 49927.

1926 Taylor Response, paras 149-152, *citing Krstić* Appeal Judgment, paras 145, 151, 266, 275.

1927 Appeal transcript, 22 January 2013, p. 49927.

1928 Appeal transcript, 23 January 2013, p. 49968.

1929 Appeal transcript, 23 January 2013, p. 49969.

1930 Taylor Appeal, para. 857, *citing* Sentencing Judgment, para. 37.

1931 Taylor Appeal, paras 857-859, *citing Brima et al.* Sentencing Judgment, para. 32, *Fofana and Kondewa* Sentencing Judgment, paras 42-43, *Fofana and Kondewa* Appeal Judgment, paras 475-477.

1932 Prosecution Response, paras 750, 754.

1933 Prosecution Response, para. 752.

1934 *See supra* paras 350-352. *See* also *supra* 482-486.

1935 *Sesay et al.* Appeal Judgment, para. 1229 (emphasis added). *See* also *Fofana and Kondewa* Appeal Judgment, para. 546, *citing Furundžija* Appeal Judgement, para. 249. *Accord Blaškić* Appeal Judgement, para. 683; *Aleksovski* Appeal Judgement, para. 182; *Čelebići* Appeal Judgement, para. 731.

1936 *Fofana and Kondewa* Appeal Judgment, paras 563, 564.

1937 *See Fofana and Kondewa* Appeal Judgment, para. 564 (the Trial Chamber must "tak[e] into consideration all factors that may be considered, legitimately, in mitigation as well as aggravation").

1938 *See Fofana and Kondewa* Appeal Judgment, para. 498 (the individual circumstances of the convicted person under Article 19(2) include aggravating and mitigating factors under Rule 101(B)).

1939 *Sesay et al.* Appeal Judgment, para. 1276.

1940 *See supra* paras 386-402, 441-445. *See* also *Čelebići* Appeal Judgment, para. 821 ("the Appeals Chamber reiterates, in agreement with the Prosecution, that 'every sentence imposed by a Trial Chamber must be individualised [. . .] and there are many factors to which the Trial Chamber may appropriately have regard in exercising its discretion in each individual case.'").

1941 *Sesay et al.* Appeal Judgment, para. 1317, *citing Čelebići* Appeal Judgment, paras 717, 821; *D. Nikolić* Judgment on Sentencing Appeal, para. 19; *Babić* Judgment on Sentencing Appeal, para. 32; *Naletilić and Martinović* Appeal Judgment, para. 615; *Simić* Appeal Judgment, para. 238; *Bralo* Judgment on Sentencing Appeal, para. 33; *Jelisić* Appeal Judgment, para. 101.

1942 *See supra* paras 591-594.

1943 The critical issue is not what factors Trial Chambers assess under which headings, whether "gravity of the crime", "convicted person's criminal conduct", "form and degree of participation in the crime", "convicted person's individual circumstances", "mitigating circumstances" and "aggravating circumstances".

1944 *Sesay et al.* Appeal Judgment, para. 1235. *See* also *Čelebići* Appeal Judgment, para. 717 ("Trial Chambers exercise a considerable amount of discretion (although it is not unlimited) in determining an appropriate sentencing. This is largely because of the overriding obligation to individualise a penalty to fit the individual circumstances of the accused and the gravity of the crime. To achieve this goal, Trial Chambers are obliged to consider both aggravating and mitigating circumstances relating to an individual accused. The many circumstances taken into account by the Trial Chambers to date are evident if one considers the sentencing judgements which have been rendered . . . . Although certain of these cases are now under appeal, the underlying principle is that the sentence imposed largely depended on the individual facts of the case and the individual circumstances of the convicted person.").

1945 S*ee* also *Lubanga* Trial Judgment, Separate Opinion of Judge Adrian Fulford, para. 9 ("I am also unpersuaded that it will assist the work of the Court to establish a hierarchy of seriousness that is dependent on creating rigorous distinctions between the modes of liability within Article 25(3) of the Statute. Whilst it might have been of assistance to "rank" the various modes of liability if, for instance, sentencing was strictly determined by the specific provision on which an individual's conviction is based, considerations of this kind do not apply at the ICC. Article 78 of the Statute and Rule 145 of the Rules of Procedure and Evidence, which govern the sentences that are to be imposed, provide that an individual's sentence is to be decided on the basis of "all the relevant factors", "including the gravity of the crime and the individual circumstances of the convicted person". Although the "degree of participation" is one of the factors listed in Rule 145(1)(c) of the Rules, these provisions *overall do not narrowly determine the sentencing range by reference to the mode of liability under which the accused is convicted, and instead this is simply one of a number of relevant factors*.") (emphasis added); *Milutinović* JCE Jurisdiction Decision, Separate Opinion of Judge David Hunt, para. 31 ("The use of such terms ["perpetrator" and "co-perpetrator(s)"] has not always been consistently followed in subsequent cases, but it appears to result from a distinction which exists in the civil law system whereby a person who merely aids and abets the perpetrator (or the person who physically executes the crime) is subject to a lower maximum sentence. The adoption of the term "co-perpetrator" is apparently intended for that purpose to distinguish the participant in a joint criminal enterprise from one who merely aids and abets. No such distinction exists in relation to sentencing in this Tribunal, *and I believe that it is unwise for this Tribunal to attempt to categorise different types of offenders in this way when it is unnecessary to do so for sentencing purposes. The Appeals Chamber has made it clear that elsewhere that a convicted person must be punished for the seriousness of the acts which he has done, whatever their categorization*.") (emphasis added).

1946 *See supra* paras 365-367. Similarly, Articles 2 through 5 do not establish a hierarchy of crimes. *See Čelebići* Appeal Judgment**,** Separate and Dissenting Opinion of Judge David Hunt and Judge Mohamed Bennouna, para. 41, *quoting Tadić* Judgment in Sentencing Appeals, para 69.

1947 Sentencing Judgment, para. 21.

1948 *Vasilijević* Appeals Judgment, para. 182. Relying on US, Chinese, South Korean, German and Austrian penal law for domestic crimes, the ICTY Appeals Chamber in *Vasiljević* held that aiding and abetting "is a form of responsibility which generally warrants a lower sentence than is

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appropriate to responsibility as a co-perpetrator." *Vasilijević* Appeals Judgment, para. 182, fn 291. ICTY and ICTR Trial and Appeals Chambers have subsequently applied this holding. *See, e.g.*, *Krstić* Appeal Judgment, para. 268; *Ndindabahizi* Appeal Judgment, para. 122; *Muhimana* Trial Judgment, para. 593; *Kajelijeli* Trial Judgment, para. 963.

1949 *Vasilijević* Appeals Judgment, para. 182, fn 291.

1950 18 U.S.C. § 2 (a). The ICTY Appeals Chamber cited the Federal Sentencing Guidelines, which only refer to an accused's minor role in the crimes as a mitigating factor, not the form of participation. *Vasilijević* Appeals Judgment, para. 182, fn 291.

1951 Austrian Penal Code, Section 32. The ICTY Appeals Chamber cited in support of its view Austrian Penal Code, Section 34(1)(6): ("it is a mitigating circumstance when the accused participated in a minor way in a crime perpetrated by several persons") ["*Ein Milderungsgrund ist es insbesondere, wenn der Täter an einer von mehreren begangenen strafbaren Handlung nur in untergeordneter Weise beteiligt war*."]. The ICTY Appeals Chamber translated this provision as "it is true that accomplices are normally less blameworthy than principals and therefore deserve less severe sentences." *Vasilijević* Appeals Judgment, para. 182, fn 291.

1952 The Brazilian Penal Code provides that whoever contributes, in any way, to the commission of a crime, incurs in the penalties provided for this crime, limited to their degree of culpability [Article 29: "*Quem, de qualquer modo, concorre para o crime incide nas penas a este cominadas, na medida de sua culpabilidade*."].

1953 The Costa Rican Criminal Code stipulates that it is up to the Judges to exercise their discretion and sentence each accused according to their degree of culpability. Costa Rican Criminal Code, Articles 71 and 74. [Costa Rican Criminal Code, Article 71: *"El Juez, en sentencia motivada, fijará la duración de la pena que debe imponerse de acuerdo con los límites señalados para cada delito, atendiendo a la gravedad del hecho y a la personalidad del partícipe. Para apreciarlos se tomará en cuenta: i) los aspectos subjetivos y objetivos del hecho punible; ii) la importancia de la lesión o del peligro; iii) las circunstancias de modo, tiempo y lugar; iv) la calidad de los motivos determinantes; v) las demás condiciones personales del sujeto activo o de la víctima en la medida en que hayan influido en la comisión del delito; y vi) La conducta del agente posterior al delito. Las características psicológicas, psiquiátricas y sociales, lo mismo que las referentes a educación y antecedentes, serán solicitadas al Instituto de Criminología el cual podrá incluir en su informe cualquier otro aspecto que pueda ser de interés para mejor información del Juez."*]; [Costa Rican Criminal Code, Article 74: *"Los autores e instigadores serán reprimidos con la pena que la ley señala al delito. Al cómplice le será impuesta la pena prevista para el delito, pero ésta podrá ser rebajada discrecionalmente por el Juez, de acue rdo con lo dispuesto en el artículo 71 y grado de participación."*].

1954 The Puerto Rican Criminal Code equates all perpetrators and takes into consideration the degree of an accused's culpability for sentencing and determining an accused's criminal liability. Puerto Rican Criminal Code, Articles 8 and 44. [Puerto Rican Criminal Code, Article 8: *"Nadie podrá ser sancionado por un hecho previsto en una ley penal si no lo ha realizado según las formas de culpabilidad provistas en este Código. La exigencia de responsabilidad penal se fundamenta en el análisis de la gravedad objetiva del daño causado y el grado de culpabilidad aparejado por la conducta antijurídica del autor."*]; [Puerto Rican Criminal Code, Article 44: *"Se consideran autores: i) los que toman parte directa en la comisión del delito; ii) los que solicitan, fuerzan, provocan, instigan o inducen a otra persona a cometer el delito; iii) los que se valen de una persona inimputable para cometer el delito; iv) los que cooperan con actos anteriores, simultáneos o posteriores a la comisión del delito, sin cuya participación no hubiera podido realizarse el hecho delictivo; v) los que se valen de una persona jurídica para cometer el delito; vi) los que actúen en representación de otro o como miembro, director, agente o propietario de una persona jurídica, siempre que haya una ley que tipifique el delito y realicen la conducta delictiva, aunque los elementos especiales que fundamentan el delito no concurran en él pero sí en el representado o en la persona juridical; vii) los que cooperan de cualquier otro modo en la comisión del delito."*].

1955 French Criminal Code, Article 121-6 ("The accomplice to the offence, in the meaning of article 121-7, is punishable as a perpetrator") and Article 121-7 ("The accomplice to a felony or a misdemeanour is the person who knowingly, by aiding and abetting, facilitates its preparation or commission. Any person who, by means of a gift, promise, threat, order, or an abuse of authority or powers, provokes the commission of an offence or gives instructions to commit it, is also an accomplice") ["Article 121-6: *Sera puni comme auteur le complice de l'infraction, au sens de l'article 121-7*; Article 121-7: *Est complice d'un crime ou d'un délit la personne qui sciemment, par aide ou assistance, en a facilité la préparation ou la consommation. Est également complice la personne qui par don, promesse, menace, ordre, abus d'autorité ou de pouvoir aura provoqué à une infraction ou donné des instructions pour la commettre*.']

1956 Italian Criminal Code, Article 110 ("When a number of people participate in the same crime, each of them is subject to the penalty provided for that crime, except for what is provided in the articles below") ["*Quando più persone concorrono nel medesimo reato, ciascuna di esse soggiace alla pena per questo stabilita, salve le disposizioni degli articoli seguenti*."]

1957 Section 1 of the Accessories and Abettors Act 1861("Whosoever shall become an Accessory before the Fact to any Felony, whether the same be a Felony at Common Law or by virtue of any Act passed or to be passed, may be indicted, tried, convicted, and punished in all respects as if he were a principal Felon."). This English legislation was incorporated in the law of Sierra Leone pursuant to Section 74 of the Courts' 1965 Act.

1958 *Fofana and Kondewa* Appeal Judgment, paras 475-477. The Appeals Chamber held that recourse to Sierra Leonean law on punishment for substantive crimes in Articles 2 through 4 of the Statute was not appropriate because those crimes are not provided for in Sierra Leonean law.

1959 *See, e.g.*, C.C. Law No. 10, Art. II(2); *Zyklon B* Case (death sentence for aiding and abetting crimes); *Justice* Case, pp. 1177, 1199-1201 ("As we have said, the defendants are not charged with specific overt acts against named victims. They are charged with criminal participation in government-organized atrocities and persecutions unmatched in the annals of history. Our judgments are based upon a consideration of all of the evidence which tends to throw light upon the part which these defendants played in the

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entire tragic drama. We shall, in pronouncing sentence, give due consideration to circumstances of mitigation and to the proven character and motives of the respective defendants.") (sentences ranged from 5 years to life imprisonment); *Ministries* Case, pp. 866-870 (particularly noteworthy is the Tribunal's reasoning regarding the sentence of Stuckart) (sentences ranged from 4 years to 20 years imprisonment); *Pohl* Case, pp. 1062-1064; *Farben* Case, pp. 1205-1208; *Einsatzgruppen* Case, pp. 509-589; *RuSHA* Case, pp. 165-167; *Hostage* Case, pp. 1318, 1319; *High Command* Case, pp. 695, 696; *Medical* Case, pp. 298-300; *Milch* Case, pp. 796, 797. *See* also the Dissenting Opinion of Judge Andersen on the sentences imposed in the *Krupp* Case, pp. 1453, 1454.

1960 The Appeals Chamber further notes that the Statutes of this Court, the ICTY, the ICTR and the ICC endorse the totality principle. *See* ICTY Statute, Art. 24; ICTY RoPE, Rule 101; ICTR Statute, Art. 23; ICTR RoPE, Rule 101; Rome Statute, Art. 77, 78, 80; ICC RoPE. Rule 145.

1961 *See supra* para. 429. *See* also *Čelebići* Appeal Judgment, paras 751, 752 (in arguing that a convicted person's sentence was too lenient, the Prosecution cited to the sentencing practices of different national jurisdictions. The convicted person replied that references to such sentencing ranges, in the absence of examples of specific sentences given in relation to virtually identical facts with the offender having virtually identical circumstances and mitigation, although of some academic interest, is in practice very limited. The Appeals Chamber agreed that reference to these national provisions in the abstract is of very limited value.).

1962 *See Kunarac* Trial Judgment, para. 29, *approved by Blaškić* Appeals Judgment, para. 682 ("The Trial Chamber notes that, because very important underlying differences often exist between national prosecutions and prosecutions in this jurisdiction, the nature, scope and the scale of the offences tried before the International Tribunal do not allow for an automatic application of the sentencing practices of the former Yugoslavia."). *See* also *Kunarać* Appeal Judgment, para. 402 (addressing the differences in the gravity of a crime committed on a national level and on an international level and the different sentencing practices that result because of these differences: "The severity of rape as a crime falling under the jurisdiction of the Tribunal is decidedly greater than that of its national counterpart. This is shown by the difference between the maximum sentences imposed respectively by the Statute and, for instance, the 1977 Penal Code of the Socialist Republic of Bosnia and Herzegovina, upon the offence of rape."); *Čelebići* Appeal Judgment, para. 758 ("The offences which the Tribunal tries are of such a nature that there is little assistance to be gained from sentencing patterns in relation to often fundamentally different offences in domestic jurisdictions.").

1963 *See Čelebići* Appeal Judgment, paras 816, 817. *See* also *Kunarać* Appeal Judgment, paras 372, 373 ("However, the latter principle [*nulla poena sine lege*], as far as penalty is concerned, requires that a person shall not be punished if the law does not prescribe punishment. It does not require that the law prescribes a precise penalty for each offence depending on the degree of gravity. . . . The Statute does not set forth a precise tariff of sentences. It does, however, provide for imprisonment and lays down a variety of factors to consider for sentencing purposes. The maximum sentence of life imprisonment is set forth in Rule 101(A) of the Rules (correctly interpreting the Statute) for crimes that are regarded by States as falling within international jurisdiction because of their gravity and international consequences. Thus, the maxim *nulla poena sine lege* is complied with for crimes subject to the jurisdiction of the Tribunal."); Rome Statute, Preamble, Art. 77(1)(b) (The Preamble of the Rome Statute recognises that unimaginable atrocities that deeply shock the conscience of humanity must not go unpunished and Article 77(1)(b) establishes that a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person may be imposed. An accused is thus on notice that if he commits such crimes he may be given the severe penalty of life imprisonment.).

1964 *See Blaškić* Appeal Judgment, paras 680, 681. *See* also *Kambanda* Appeal Judgment, para. 121 (the ICTR Appeals Chamber affirmed the Trial Chamber's finding that the general practices of the Rwandan courts in sentencing can be used for guidance but they are not binding on the ICTR); *Serushago* Appeal Judgment, para. 30 ("It is the settled jurisprudence of the ICTR that the requirement that 'the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda' does not oblige the Trial Chambers to conform to that practice; it only obliges the Trial Chambers to take account of that practice."); *Tadić* Judgment in Sentencing Appeals, para. 21 ("The jurisprudence of this Tribunal has consistently held that, while the law and practice of the former Yugoslavia shall be taken into account by the Trial Chambers for the purposes of sentencing, the wording of Sub-rule 101(A) of the Rules, which grants the power to imprison for the remainder of a convicted person's life, itself shows that a Trial Chamber's discretion in imposing sentence is not bound by any maximum term of imprisonment applied in a national system."); *Krstić* Appeal Judgment, paras 262, 270; *Kunarać* Appeal Judgment, paras 343 ("The fundamental consideration in this regard is, according to the *Čelebići* Appeal Judgement, that 'the sentence to be served by an accused must reflect the totality of the accused's criminal conduct.'"), 349 ("The case-law of the Tribunal, as noted in the Trial Judgement, has consistently held that this practice is not binding upon the Trial Chambers in determining sentences."), 377 ("As previously stated, a Trial Chamber must consider, but is not bound by, the sentencing practice in the former Yugoslavia. It is only where that sentencing practice is silent or inadequate in light of international law that a Trial Chamber may consider an approach of its own.").

1965 Taylor Appeal, para. 863.

1966 Taylor Appeal, para. 863.

1967 Prosecution Response, paras 763-766.

1968 Prosecution Response, para. 760.

1969 Prosecution Response, paras 761, 762.

1970 Statute, Article 17(2).

1971 Rule 100(A).

1972 Rule 100(B) (emphasis added).

1973 Transcript, Sentencing Hearing, 16 May 2012, pp 49722-49734.

1974 *Fofana and Kondewa* Appeal Judgment, para. 466; *Sesay et al.* Appeal Judgment, para. 1202. *Accord Čelebići* Appeal Judgment, para. 780.

1975 The Trial Chamber noted that "[i]t is a widely accepted practice that aggravating factors should be established by the Prosecution beyond reasonable doubt, and that only

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circumstances directly related to the commission of the offence charged, and for which the Accused has been convicted, can be considered to be aggravating." Sentencing Judgment, para. 24. It also observed that the Statute and the Rules do not provide an enumeration of the circumstances that the Trial Chamber may consider as aggravating and therefore it proceeded to consider, based on established jurisprudence, such factors as "(i) the position of the accused, that is, his position of leadership, his level in the command structure, or his role in the broader context of the conflict [. . .]; (ii) the discriminatory intent or the discriminatory state of mind for crimes for which such a state of mind is not an element or ingredient of the crime; (iii) the length of time during which the crime continued; (iv) active and direct criminal participation, if linked to a high-rank position of command, the accused's role as fellow perpetrator, and the active participation of a superior in the criminal acts of subordinates; (v) the informed, willing or enthusiastic participation in crime; (vi) premeditation and motive; (vii) the sexual, violent, and humiliating nature of the acts and the vulnerability of the victims; (viii) the status of the victims, their youthful age and number, and the effect of the crimes on them; (ix) the character of the accused; and (x) the circumstances of the offences generally." Sentencing Judgment, para. 25.

1976 Sentencing Judgment, para. 96.

1977 Sentencing Judgment, para. 97.

1978 Sentencing Judgment, para. 98.

1979 Sentencing Judgment, para. 99 (the Trial Chamber found that "Mr. Taylor benefited from this terror and destruction through a steady supply of diamonds from Sierra Leone. His exploitation of the conflict for financial gain is, in the view of the Trial Chamber, an aggravating factor.").

1980 Sentencing Judgment, para. 100.

1981 Sentencing Judgment, para. 101.

1982 Sentencing Judgment, para. 97 ("Mr. Taylor was part of the process relied on by the international community to bring peace to Sierra Leone. But his actions undermined this process, and rather than promote peace, his role in supporting the military operations of the AFRC/RUF in various ways, including through the supply of arms and ammunition, prolonged the conflict. The lives of many more innocent civilians in Sierra Leone were lost or destroyed as a direct result of his actions.").

1983 Sentencing Judgment, para. 97.

1984 Sentencing Judgment, para. 102 (emphasis added).

1985 Sentencing Judgment, para. 98.

1986 Sentencing Judgment, para. 27.

1987 Sentencing Judgment, para. 98.

1988 Taylor Appeal, paras 833-838.

1989 Taylor Appeal, paras 833, 834.

1990 Taylor Appeal, paras 835, 837.

1991 Taylor Appeal, para. 838.

1992 Taylor Appeal, para. 838.

1993 Taylor Appeal, paras 851-853.

1994 Prosecution Response, para. 736.

1995 Prosecution Response, para. 736.

1996 Prosecution Response, para. 740.

1997 Prosecution Response, para. 740.

1998 Prosecution Response, para. 748.

1999 Prosecution Response, para. 748.

2000 Sentencing Judgment, para. 20.

2001 *Sesay et al.* Appeal Judgment, para. 1276.

2002 Trial Judgment, para. 2335. *See* also Trial Judgment, para. 2377.

2003 Trial Judgment, para. 2335, fn. 5082.

2004 S.C. Res. 1132 (1997).

2005 Transcript, Charles Taylor, 14 July 2009, pp. 24332-24336.

2006 Transcript, Charles Taylor, 14 July 2009, pp. 24331, 24332, 24336.

2007 Transcript, Charles Taylor, 14 July 2009, p. 24336.

2008 Trial Judgment, para. 6783.

2009 Trial Judgment, para. 6057.

2010 Trial Judgment, para. 6455.

2011 At a meeting in Monrovia while participating in ECOWAS efforts to promote peace in Sierra Leone, Taylor told Issa Sesay to say he would disarm but then "not do it in reality," saying one thing to Sesay in front of the ECOWAS Heads of State and another to him in private. Taylor urged Issa Sesay not to listen to the Sierra Leonean Government and promised the RUF his continuing assistance, for which he gave Issa Sesay $USD 15,000. Again in mid-2001, Taylor asked Issa Sesay whether it would be safe for the RUF to disarm and advised Issa Sesay not to disarm at all. Taylor advised Sesay to not disarm in part so that RUF/AFRC fighters could participate in combat operations in Guinea and Liberia against Taylor's enemies. The trade of diamonds for arms and ammunition between Taylor and the RUF/AFRC also continued throughout this time. *See* Trial Judgment, paras 6442, 6444, 6447, 6449, 6450, 6451(xi), 6458, 6785. *See* generally Trial Judgment, paras 6416-6450 (Peace Process: Communication with Issa Sesay on Disarmament).

2012 *See Seromba* Appeal Judgment, paras 229, 230.

2013 *Sesay et al.* Appeal Judgment, para. 1235.

2014 *Sesay et al.* Appeal Judgment, para. 1234, *citing Deronjić* Appeal Judgment, para. 107.

2015 The Trial Chamber noted that "[m]itigating circumstances need only be proven on a balance of probabilities, and need not be related to the offence." Sentencing Judgment, para. 31. It also noted that "neither the Statute nor the Rules define the factors that may be considered to be mitigating. Accordingly, what constitutes a mitigating factor is a matter for the Trial Chamber to determine in the exercise of its discretion." Sentencing Judgment, para. 32.

2016 Sentencing Judgment, para. 35 ("The Trial Chamber considers that certain factors do not constitute mitigating circumstances and will therefore not take them into account. These include but are not limited to (i) the fact that convictions relate to crimes committed in less districts than those particularised in the Indictment in no way lessens the seriousness of the offences; (ii) the fact that a sentence is to be served in a foreign country should not be considered in mitigation; (iii) the guerrilla nature of the conflict does not lessen the grievous nature of the offences; and (iv) whilst motive may shade the individual perception of culpability, it does not amount to a legal excuse for criminal conduct.").

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2017 Sentencing Judgment, para. 91.

2018 Taylor Appeal, paras 831-832, *referring* to Sentencing Judgment, para. 35.

2019 Taylor Appeal, para. 831, *citing Sesay et al.* Trial Judgment, para. 206.

2020 Taylor Appeal, para. 831.

2021 Taylor Appeal, para. 832.

2022 Taylor Appeal, para. 872.

2023 Taylor Appeal, para. 872.

2024 Prosecution Response Brief, paras 731-734, *citing Tadić* Sentencing Appeal Judgment, paras 18, 22, *Mrđa* Sentencing Judgment, para. 109.

2025 Prosecution Response, Brief, para. 732, *citing Sesay et al.* Appeal Judgment, para. 1246.

2026 Prosecution Response, para. 772.

2027 Prosecution Response, paras 772, 774.

2028 Prosecution Response, paras 772, 775.

2029 *Sesay et al.* Appeal Judgment, para. 1246, *citing Mrđa* Sentencing Judgment, para. 109. *See* also *Tadić* Sentencing Appeal Judgment, paras 18, 22.

2030 *Accord Blaškić* Appeal Judgment, para. 705; *Vasiljević* Appeal Judgment, para. 177, *citing, inter alia, Todorović* Sentencing Judgment, para. 89. *See* also *Blaškić* Trial Judgment, para. 775, *citing Erdemović* Second Sentencing Judgment, para. 16; *Akayesu* Sentencing Judgment, para. 35(i); *Serushago* Sentencing Judgment, paras 40-41; *Kambanda* Judgment, para. 51; *Jelisić* Trial Judgment, para. 127; *Ruggiu* Trial Judgment, paras 69-72; *Simić* Sentencing Judgment, para. 92; *Banović* Sentencing Judgment, para. 70.

2031 *Sesay et al.* Appeal Judgment, para. 1248 (holding that Sesay misstated the law in submitting that "in order to constitute a mitigating circumstance 'it is sufficient for the accused to extend his sympathy for victims of the conflict'").

2032 *Fofana and Kondewa* Appeal Judgment, para. 490; *Sesay et al.* Appeal Judgment, para. 1249.

2033 Sentencing Judgment, para. 91.

2034 Sentencing Judgment, Disposition.

2035 *See* generally Sentencing Judgment, paras 70-103.

2036 Sentencing Judgment, para. 70.

2037 Sentencing Judgment, para. 71.

2038 Sentencing Judgment, paras 71, 72, 74.

2039 Sentencing Judgment, paras 71, 75.

2040 Sentencing Judgment, paras 72, 75.

2041 Sentencing Judgment, para. 74.

2042 In this respect, the Trial Chamber recalled in particular the testimony of Witness TF1-064, who "was forced to carry a bag containing human heads to Tombodu. On the way, the rebels ordered her to laugh as she carried the bag dripping with blood. TF1-064 testified that when they arrived at Tombodu, the bag was emptied and she saw the heads of her children." It also recalled that Witness TF1-143 "was 12 years old when he and 50 other boys and girls were captured by RUF rebels in September 1998 in Konkoba. The rebels turned him into a child soldier after carving the letters 'RUF' on his chest. Having been told to amputate the hands of those who resisted him, this 12 year-old subsequently used a machete to amputate the hands of men who had refused to open the door of their shop. When ordered on a food-finding mission to rape an old woman they found at a farmhouse, the boy cried and refused, for which he was punished." The Trial Chamber also recalled "the testimony of TFI-358, who treated a young nursing mother whose eyes had been pulled out from their sockets after she was gang raped by seven armed rebels, so that she would not be able to later identify them." Sentencing Judgment, para. 72. For a more detailed description of the crimes and the brutality used by RUF/AFRC forces, see *supra* Section V of the Appeal Judgment and accompanying footnotes. The Trial Chamber also described the "long-term impact" of the crimes on the victims' life as "devastating" and highlighted that the victims' "suffering will be life-long." Sentencing Judgment, para. 71.

2043 Sentencing Judgment, para. 76.

2044 Sentencing Judgment, para. 76.

2045 Sentencing Judgment, para. 76.

2046 Sentencing Judgment, para. 76.

2047 Sentencing Judgment, paras 87-94.

2048 Taylor Appeal, paras 841-848.

2049 Prosecution Response, para. 741.

2050 Prosecution Appeal, paras 190-194.

2051 Prosecution Appeal, paras 201-212.

2052 Prosecution Appeal, paras 213-223.

2053 Prosecution Appeal, paras 224-234.

2054 Taylor Response, paras 122, 123, 126-129, *citing* paras 20, 21 and 70 of the Sentencing Judgment.

2055 Taylor Response, paras 130-142.

2056 Taylor Response, paras 154-157.

2057 *Sesay et al.* Appeal Judgment, para. 1229; *Fofana and Kondewa* Appeal Judgment, para. 546.

2058 *See Čelebići* Appeal Judgment, para. 821 ("The guidance which may be drawn from previously decided cases, in terms of the final sentence imposed, is accordingly very limited.").

2059 *Sesay et al.* Appeal Judgment, para. 1317, *citing Kvočka et al.* Appeal Judgment, para. 681, *Čelebići* Appeal Judgment, paras 719, 721, *Furundžiija* Appeal Judgment, para. 250, *Limaj et al.* Appeal Judgment, para. 135, *Blagojević and Jokić* Appeal Judgment, para. 333.

2060 Sentencing Judgment, paras 100-102.

2061 *See supra* para. 670.

2062 *See supra* para. 574.

2063 The principle applies not only in customary international law, but also in both civil and common law.

2064 Defense Oral Argument on Appeal, Appeal transcript, 22 January 2013, pp. 49898-49899.

2065 Defense Oral Argument on Appeal, Appeal transcript, 22 January 2013, p. 49896.

2066 Defense Oral Argument on Appeal, Appeal transcript, 22 January 2013, p. 49896.

2067 Rule 14(A); *See* Agreement, Article 2; Statute, Article 13; *See* also ICTY RoPE, Rule 14(A); ICTY Statute, Article 13;

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ICTR RoPE, Rule 14(A); ICTR Statute, Article 12.

2068 I note that these types of arguments are not limited to international courts nor made only by the criminal defense. *See, e.g.*, *Netherlands v. Nuhanovic* Supreme Court Judgment, para. 3.18.13 (The Supreme Court of the Netherlands dismissed the Appellant's argument that finding The Netherlands liable for the actions of the Dutch Battalion in Srebrenica would deter other nations from deploying personnel on United Nations missions, and asserted that its responsibility to adjudicate was not altered "*by the fact that the State expects this to have an adverse effect on the implementation of peace operations by the United Nations, in particular on the willingness of member States to provide troops for such operations. This should not, after all, prevent the possibility of judicial assessment in retrospect of the conduct of the relevant troop contingent*.") (emphasis added).

2069 Oliver Wendell Holmes Jr., *The Common Law*, p. 1.

2070 The eight Judges are drawn from seven different countries: Austria, Nigeria, Northern Ireland (United Kingdom of Great Britain and Northern Ireland), Samoa, Sierra Leone, Uganda, and the United States of America. They were appointed by the Government of Sierra Leone and the Secretary General of the United Nations.

2071 Defence Motion for Extension of Time to File Notice of Appeal, 5 June 2012.

2072 Defence Motion for Extension of Time to File Notice of Appeal, para. 2; Prosecution Response to Defence Motion for Extension of Time to File Notice of Appeal, 6 June 2012.

2073 Scheduling Order for Status Conference on 18 June 2012, 8 June 2012; Corrigendum Scheduling Order for Status Conference on 18 June 2012, 11 June 2012.

2074 Scheduling Order for Status Conference on 18 June 2012, 8 June 2012; Corrigendum Scheduling Order for Status Conference on 18 June 2012, 11 June 2012.

2075 Prosecution Notice of Intention to Appeal, 18 June 2012; Defence Notice of Intention to File Notice of Appeal, 18 June 2012.

2076 Decision on Defence Motion for Extension of Time to File Notice of Appeal, 20 June 2012.

2077 Taylor Notice of Appeal, 19 July 2012; Corrigendum to Notice of Appeal of Charles Ghankay Taylor, 23 July 2012; Prosecution Notice of Appeal, 19 July 2012.

2078 Taylor Notice of Appeal, 19 July 2012; Prosecution Notice of Appeal, 19 July 2012.

2079 Charles Ghankay Taylor's Motion for Partial Voluntary Withdrawal or Disqualification of Appeals Chamber Judges, 19 July 2012.

2080 Charles Ghankay Taylor's Motion for Partial Voluntary Withdrawal or Disqualification of Appeals Chamber Judges, p. 1.

2081 Charles Ghankay Taylor's Motion for Partial Voluntary Withdrawal or Disqualification of Appeals Chamber Judges, p. 1.

2082 Charles Ghankay Taylor's Motion for Partial Voluntary Withdrawal or Disqualification of Appeals Chamber Judges, p. 1.

2083 Decision on Charles Ghankay Taylor's Motion for Partial Voluntary Withdrawal or Disqualification of Appeals Chamber Judges, 13 September 2012.

2084 Scheduling Order for Written Submissions Regarding Rules 111, 112 and 113, 20 July 2012, p. 3.

2085 Defence Motion for Extensions of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, 24 July 2012.

2086 Prosecution Consolidated Motion Pursuant to Scheduling Order for Written Submissions regarding Rules 111, 112 and 113, 24 July 2012.

2087 Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, 7 August 2012, para. 31.

2088 Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, para. 31.

2089 Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, para. 31.

2090 Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, para. 31.

2091 Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, para. 31.

2092 Motion for Reconsideration or Review of "Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113," 15 August 2012.

2093 Motion for Reconsideration or Review of "Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113," 15 August 2012.

2094 Decision on Defence Motion for Reconsideration or Review of "Decision on Prosecution and Defence Motions for Extension of Time and Page Limits Pursuant to Rules 111, 112 and 113 and Final Order on Extension of Time for Filing Submissions," 21 August 2012.

2095 Decision on Defence Motion for Reconsideration or Review of "Decision on Prosecution and Defence Motions for Extension of Time and Page Limits Pursuant to Rules 111, 112 and 113 and Final Order on Extension of Time for Filing Submissions," pp. 3-4.

2096 Notice Relevant to Appeal Hearing, 31 August 2013.

2097 Public Prosecution Appellant's Submissions with Confidential sections D & E of the Book of Authorities, 1 October 2012; Public with Confidential Annex A and Public Annexes B and C Appellant's Submissions of Charles Ghankay Taylor, 1 October 2012.

2098 Scheduling Order for Filings and Submissions, 4 October 2012.

2099 Scheduling Order for Filings and Submissions, pp. 3-4.

2100 Urgent Prosecution Motion for Reconsideration or Review of the Pre-Hearing Judge's 4 October 2012 "Scheduling Order for Filings and Submissions," 5 October 2012.

2101 Decision on Prosecution Motion for Reconsideration or Review of the Pre-Hearing Judge's 4 October 2012 "Scheduling Order for Filings and Submissions," 16 October 2012.

2102 Respondent's Submissions of Charles Ghankay Taylor (Public with Confidential Annex A and Public Annex B), 23 November

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2012; Public Prosecution Respondent's Submissions with Confidential Annexes A and D, 23 November 2012.

2103 Prosecution's Submission in Reply, 30 November 2012; Submissions in Reply of Charles Ghankay Taylor, 30 November 2012.

2104 Scheduling Order, 30 November 2012.

2105 Urgent Motion for Reconsideration or Review of "Scheduling Order," 4 December 2012.

2106 Decision on Urgent Motion for Reconsideration or Review of "Scheduling Order," 5 December 2012.

2107 Defence Motion to Present Additional Evidence Pursuant to Rule 115, 30 November 2012.

2108 Charles Ghankay Taylor's Motion for Disqualification of Justice Shireen Avis Fisher from Deciding the Defence Motion to Present Additional Evidence Pursuant to Rule 115, 30 November 2012.

2109 Decision on Charles Ghankay Taylor's Motion for Disqualfication of Justice Shireen Avis Fisher from Deciding the Defence Motion to Present Additional Evidence Pursuant to Rule 115, 17 December 2012.

2110 Notice to the Parties, 18 January 2013.

2111 Decision on Defence Motion to Present Additional Evidence Pursuant to Rule 115, 18 January 2013.

2112 Prosecution Motion for Leave to File Additional Written Submissions regarding the ICTY Appeals Judgment in Perišić, 14 March 2013.

2113 Decision on Prosecution Motion for Leave to File Additional Written Submissions regarding the ICTY Appeals Judgment in Perišić, 20 March 2013.

2114 Request for Leave to Amend Notice of Appeal, 3 April 2013.

2115 Prosecution Response to Mr. Taylor's Request for Leave to Amend Notice of Appeal, 5 April 2013.

2116 Order Denying Defence Request for Leave to Amend Notice of Appeal, 11 April 2013.

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