U.C. Berkeley War Crimes Studies Center

Sierra Leone Trial Monitoring Program

Charles Taylor Monthly Trial Report (August 1, 2010 – September 30, 2010)

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1. Overview

The Taylor trial began to wind down during this reporting period, with the testimony of two Defense witnesses and three additional witnesses for the Prosecution. Issa Sesay concluded his testimony and the Defense called DCT-008, a Liberian radio operator for Taylor's Special Security Services (SSS) unit. The Prosecution also called three witnesses in August, re-opening its case approximately a year and a half after formally resting in February 2009.

The Court dealt with a number of important legal issues including, *inter alia,* the exclusion of custodial statements given by Defense witness Issa Sesay; the introduction of documentary evidence; the Prosecution's disclosure of information about Defense witness DCT-097; a Defense motion to exclude or limit evidence falling outside the scope of the indictment; and a motion requesting an investigation into contempt of court for the Prosecution.

Witnesses who testified during this reporting period include:

1. Naomi Campbell
2. Mia Farrow
3. Carole White
4. DCT-172, Issa Sesay
5. DCT-008

This report summarizes witness testimony heard during the months of August and September 2010 and identifies important issues that have arisen at trial. As with previous WCSC monitoring reports, it is available at http://socrates.berkeley.edu/~warcrime/SL_Monitoring_Reports.htm.

2. Defense Themes and Strategies

The Defense called some of its final witnesses in the *Taylor* trial during this reporting period. Testimony and legal issues reflected themes the Defense has pursued throughout its case, including denial that Taylor controlled or assisted the RUF (in particular with arms purchases), and claims that Taylor had no knowledge of certain communications, such as those between Benjamin Yeaten and Sam Bockarie.

The Court also issued decisions on a number of Defense motions during this reporting period. Most of the Defense motions concerned evidentiary matters. In July, the Defense petitioned the Court to exclude eleven statements taken by Prosecution investigators from Issa Sesay after he had been taken into custody in 2003. On August 12, a majority of Trial Chamber II, Justice Sebutinde dissenting, found

that the motion was premature—since the Prosecution had not yet sought to introduce the statements—and therefore dismissed the Defense motion.[1] The Defense also sought admission of documentary evidence under Rule 92*bis*, some of which was allowed by the Court and some denied, as discussed in more detail below. In addition, the Defense requested disclosure of exculpatory information and information about some $30,000 in payments made by the Prosecution to Defense Witness DCT-097. The Trial Chamber granted the Defense motion in part, ruling that Prosecutors must disclose information relating to payments made to DCT-097. The Defense also moved to exclude evidence falling outside the scope of the indictment. The Defense considered the "ex-temporal" and "ex-territorial" evidence introduced by the Prosecution to be irrelevant, not in the interests of justice and in violation of Article 17 and Rule 95.[2] The Trial Chamber dismissed the motion as prematurely filed, and found that the issues would be more appropriately addressed in the parties' final briefs and closing arguments. Finally, in a still-undecided motion filed during the reporting period, the Defense alleged abuse of process for the way in which the Prosecution has conducted its investigations. The motion sought relief in the form of an independent investigation into the OTP and its investigators under Rule 77,[3] alleging that OTP practices brought the administration of justice into disrepute.

3. Prosecution Themes and Strategies

In keeping with its strategy throughout the Defense case, the Prosecution sought to impeach Defense witnesses by questioning them on prior inconsistent statements, internal inconsistencies with their testimonial statements, and inconsistencies with other Defense evidence, including the testimony of Charles Taylor.

In an unusual move, the Trial Chamber allowed the Prosecution to re-open its case in order to call three new witnesses in August: Naomi Campbell, Mia Farrow and Carole White. The Prosecution had specially petitioned the Court for this privilege, arguing that the witnesses would be able to provide testimony about a central issue in the *Taylor* case—his participation in a joint criminal enterprise involving the sale of diamonds for arms to be used by the RUF in committing atrocities in Sierra Leone—and would impeach Taylor's testimony that he had never possessed diamonds. The testimony these witnesses gave in August will be discussed in greater detail below.

The day after the Chamber dismissed the Defense motion to exclude Sesay's custodial statements, the Prosecution sought to cross-examine Sesay on the custodial statement from March 10, 2003. The Prosecution wanted to use the interview to impeach Sesay's testimony. The Chamber denied the application.[4] The Prosecution sought leave to appeal the decision, unsuccessfully arguing that there was no legal basis to exclude Sesay's statements in the *Taylor* trial because Sesay appeared as a witness in the *Taylor* trial, whereas he was an Accused in the *RUF* trial. The Trial Chamber denied the Prosecution's application for leave to appeal.

As it has with past Defense witnesses, the Prosecution also applied for disclosure of all of DCT-008's six witness statements, arguing that the statements differed significantly from his in-court testimony. Both

[1] Prosecutor v. Taylor, Case No. SCSL-03-01-1045, Decision on Defense Motion to Exclude Custodial Statements of Issa Sesay, 12 August 2010, pg. 4 [hereinafter "Sesay Decision"].
[2] Special Court for Sierra Leone, Statute, Article 17; Rules, Rule 95.
[3] Rules, Rule 77(A)(iv) and Rule 77(C)(iii).
[4] *Taylor*, Trial Transcript, 13 August 2010, pg. 62 – 3 (lines 10 – 29; lines 1 – 2).

the Defense and the Prosecution reiterated the same arguments they have made on the matter throughout the trial.[5] Consistent with earlier decisions, the Trial Chamber again dismissed the application.[6] Although the Court refused to order disclosure of the witness statements themselves, the Prosecution relied heavily on summaries of the statements during the cross-examination of DCT-008. In order to support these accusations, the Prosecution wanted to mark all of the summaries for identification. By a majority, with Justice Sebutinde dissenting, the Judges allowed the summaries into evidence.

4. Legal and Procedural Issues

This section details the legal and procedural issues that arose as the *Taylor* trial neared its conclusion, including evidentiary matters and longstanding Defense concerns about OTP witness management and investigative practices.

a. Defense Motion to Exclude Custodial Statements of Issa Sesay

In July, the Defense petitioned the Court to exclude eleven statements Issa Sesay gave Prosecution investigators after he had been taken into custody in 2003. The Defense argued that because Trial Chamber I had excluded the statements from evidence in Sesay's own trial (*Prosecutor v. Sesay et al.*) they should not be used for cross-examination in the *Taylor* trial. The Defense argued that admitting the statements would put the administration of justice into "disrepute." In its response, the Prosecution opposed the motion and sought admission of a single day of custodial interview transcripts from March 10, 2003. Prosecutors argued that Sesay's rights as an Accused in the RUF trial must be distinguished from his status as a witness in the *Taylor* trial. The Prosecution argued that the March 10 statement was relevant and that using it to cross-examine Sesay would be in the interests of justice.

By a majority, Justice Sebutinde dissenting, Trial Chamber II denied the motion, finding it premature, because the Prosecution had not requested introduction of the statements before the Defense filed its motion to exclude them.[7] The Court noted that the statements were "fresh evidence" as they "were not admitted during the Prosecution case, whether or not they were available to the Prosecution at the time."[8] Focusing on procedure rather than the substance of the parties' arguments, the Court considered that the Prosecution had not filed a motion to admit the documents, or addressed the test for admission of fresh evidence. The Majority interpreted the Prosecution's response as merely advising the Court that it would eventually seek to use the March 10 interview in cross-examination.[9] This is in

[5] Applications for access to or disclosure of witness statements have been a frequent issue in the Taylor case. *See e.g.,* Charles Taylor Monthly Trial Report (February 22, 2010 – March 31, 2010) pgs. 2- 4; Charles Taylor Monthly Trial Report (June 1, 2010 – June 30, 2010), pg. 3.

[6] The Judges addressed a similar issue previously; see for example Charles Taylor Monthly Trial Report (February 22, 2010 – March 31, 2010) pgs. 2- 5 (Allowing the requested disclosure of witness statements in one of three instances); Charles Taylor Monthly Trial Report (June 1, 2010 – June 30, 2010), pg. 3 (Ordering the disclosure of the Defense witness statement).

[7] Prosecutor v. Taylor, Case No. SCSL-03-01-1045, Decision on Defense Motion to Exclude Custodial Statements of Issa Sesay, 12 August 2010, pg. 4 [hereinafter "Sesay Decision"].

[8] Sesay Decision, pg. 4, citing Prosecutor v. Taylor; Case No. SCSL-03-01-T-865, Decision on Prosecution Motion in Relation to the Applicable Legal Standards Governing the Use and Admission of Documents by the Prosecution During Cross-Examination, 30 November 2009, para 23 [hereinafter "Decision on Documents"].

[9] Sesay Decision, pg. 1.

spite of the fact that the Prosecution explicitly "request[ed] the Chamber to . . . allow the Prosecution to use the Interview of 10 March 2003 during its cross-examination of Witness Sesay. . . ."[10] The Court further noted that without being able to review the relevant statement (appended to the motions only in part by the Prosecution, without the substance of the issues of interest to the *Taylor* trial), it could not make a ruling on its use and/or admissibility.

Justice Sebutinde, in her dissenting opinion, addressed the findings of Trial Chamber I, opining:

> [T]he said documents should be excluded in this trial on the same grounds, notwithstanding that Mr. Sesay now appears in this trial as a witness and not as an Accused person. In my considered opinion, a distinction must be drawn by the Trial Chamber between legitimate witness statements that are obtained in legally acceptable circumstances and which may legitimately be used in evidence and/or during cross examination, on the one hand, and those that are obtained in illegal or illegitimate circumstances rendering their admission into evidence and/or use in cross-examination an embarrassment to the administration of justice, on the other. While the former are admissible, the latter are not.[11]

b. Prosecution Motion to Use Statement and Subsequent Appeal

The day following the Chamber's denial of the Defense motion to exclude Sesay's custodial statements, the Prosecution sought to cross-examine Sesay on the March 10 statement. Counsel for the Prosecution only wanted to use prior inconsistent statements in the interview to impeach Sesay's testimony. However, the Prosecution noted that the interview did include information that could prove Taylor's guilt, specifically regarding Sesay's delivery of diamonds to Taylor. Without hearing arguments on the issue, the Chamber unanimously denied the application for this use of "fresh evidence." Referring to its November 30, 2009 decision on fresh evidence, the Chamber held that using the statements to impeach Sesay's testimony would not be in the interests of justice and would violate Taylor's rights to a fair trial because they tended to prove Taylor's guilt.[12] Justice Lussick, delivering the decision of the court, ruled that:

> [W]e're aware of the way in which [the statement] was obtained and I think the application you referred to earlier sets out the details of how it was obtained involuntarily from the witness and adjudicated by Trial Chamber I to have been so involuntarily obtained. . . . Now, because . . . the material does go to the proof of guilt of the Accused, we're of the view, as we have expressed in our decision of 30 November 2009, that such material would not be in the interests of justice to be used against the Accused by cross-examining this witness on that material. It also, in our view, would

[10] Taylor, Case No. SCSL-03-01-1002, Prosecution Response to Defense Motion to Exclude Custodial Statements of Issa Sesay, 12 July 2010, para 27.
[11] Sesay Decision, pg. 5.
[12] *Taylor*, Trial Transcript, 13 August 2010, pg. 62 (lines 22 – 28); see also *Taylor*, Case No. SCSL-03-01-865, Decision on Prosecution motion in relation to the applicable legal standards governing the use and admission of documents by the Prosecution during cross-examination, 30 November 2009.

violate the fair trial rights of the accused.[13]

Thus, it seems that the Court reasoned that because the statement went to prove Taylor's guilt and had been taken involuntarily from Sesay, using the statement in the *Taylor* trial would violate Taylor's fair trial rights and would not be in the interests of justice.

The Prosecution sought leave to appeal the decision. The motion argued that the Court erred in law on two issues. First, the Prosecution argued that there was no legal basis to exclude Sesay's March 10, 2003 statement in the *Taylor* trial because Sesay is appearing as a witness in the *Taylor* trial, whereas he was an Accused in the *RUF* trial. This, the Prosecution maintained, was a material distinction, and the Trial Chamber gave no indication how admission of the statements would breach Taylor's fair trial rights as the Accused in the case.

Secondly, the Prosecution argued that the Court erred when it determined that allowing the Prosecution to use the statement would not be in the interests of justice. The Prosecution averred that cross-examining the Witness with prior inconsistent statements regarding Taylor's relationship to the AFRC/RUF would, in fact, further the interests of justice. The motion argued that prohibiting use of the statements would interfere with the course of justice, violate the Prosecution's fair trial rights and interrupt the search for the truth. "The ability of the Prosecution to effectively cross-examination is critical as the defense for Charles Taylor has placed great reliance on his evidence," the Prosecution argued.[14] Prosecution counsel maintained that Sesay's March 10, 2003 statement contradicted evidence on key aspects of the case. According to a summary annex attached to the Prosecution motion, Sesay previously told investigators:

- That he met Taylor for the first time when he was on his way to Camp Naama;[15]
- That Taylor had "complete responsibility" and gave orders directly to Sam Bockarie while Foday Sankoh was in prison;[16]
- That he was instructed by Sankoh to take orders from Taylor during Sankoh's absence;[17]
- That Taylor had "sponsored the whole revolution; he trained the men, he sponsored the whole program;"[18]
- That he delivered diamonds to Taylor eleven or twelve times in exchange for ammunition and other supplies for the RUF;[19]
- That Jungle communicated information from Liberia to the RUF.[20]

In order to be granted leave to seek interlocutory appeal of a Trial Chamber decision, the moving party must show irreparable prejudice and exceptional circumstances. In this case, the Prosecution argued

[13] Decision on Appeal, pgs. 5 – 6, citing *Taylor*, Trial Transcript, 13 August 2010, pg. 62 (lines 22 – 28).
[14] Prosecutor v. Taylor, Case No. SCSL-03-01-1050, Urgent Application for Leave to Appeal Decision Excluding the Use of Custodial Statements of Issa Sesay, 16 August 2010, para 14 [hereinafter "Prosecution Motion to Appeal Sesay Decision"].
[15] Prosecution Motion to Appeal Sesay Decision Annex A, Interview with Sesay 10 March 2003, pgs. 33 – 34.
[16] *Id*., pgs. 35 – 36.
[17] *Id*., pgs. 35, 36, 38, 39.
[18] *Id*., pgs. 35 and 36.
[19] *Id*., pgs. 29, 40, 43, 53.
[20] Prosecution Motion to Appeal Sesay Decision, para 15.

that Sesay's testimony in the *Taylor* trial was "diametrically opposed to the statement he initially gave to Prosecution investigators on the first occasion he was interviewed, as regards his dealings with the Accused and the role of the Accused in relation to the RUF."[21] The Prosecution would suffer prejudice, the motion argued, if barred from using the prior statements, because it would not be able to conduct a "full and proper cross-examination" of a witness. As for "exceptional circumstances," the Prosecution argued that determining the veracity of evidence given by this "uniquely situated" witness "will impact upon ultimate findings in the case" and therefore warrants leave to appeal the Trial Chamber's decision. Moreover, the Prosecution maintained, the issues of 1) using a prior Accused's statements in a separate trial where that Accused appears voluntarily as a witness; and 2) whether a Trial Chamber can follow decisions of another Chamber in determining the admissibility of statements used during cross-examination are of fundamental legal importance and also qualify as "exceptional circumstances" warranting an appeal.

The Defense opposed the motion, arguing that the Prosecution failed to satisfy the elements of the conjunctive test. The Defense argued that Trial Chamber II had not committed an error of law but had properly exercised its discretion in rejecting admission or use of the document and had correctly applied the test for fresh evidence that is probative of the guilt of the Accused.[22] Counsel for the Accused argued against the claim of exceptional circumstances, pointing out that the decision did not prevent the Prosecution from cross-examining Sesay.[23] Moreover, considering the tremendous resources available to the Prosecution, Defense argued, they could not claim to suffer irreparable prejudice based on the exclusion from evidence of a single prior statement.[24]

The Trial Chamber denied the Prosecution's application. [25] The Court recalled that in November 2009, it held that "fresh evidence" containing evidence probative of the guilt of the Accused would only be allowed during cross-examination if it is 1) in the interests of justice; 2) does not violate the fair trial rights of the Accused; and 3) the Prosecution can establish "exceptional circumstances" for admitting the new evidence.[26] In determining whether the Prosecution met the "exceptional circumstances" prong of the fresh evidence test, the Trial Chamber would consider 1) when and how the Prosecution obtained the documents; 2) when the documents were disclosed to the Defense; and 3) why they were offered at the conclusion of the Prosecution's case.[27]

The Court concluded that it had correctly exercised its judicial discretion when it held that the Prosecution had failed to meet the fresh evidence test, emphasizing the issues of the interests of justice, fair trial rights, and how the Prosecution obtained the materials. The Chamber recalled its oral decision of 13 August 2010, quoted above, where it seemed to rationalize that because the statements went to prove the guilty of the Accused, and had been involuntarily obtained from Sesay, using them would violate Taylor's fair trial rights. The Court did not accept Prosecution arguments distinguishing the statements in the context of the *RUF* trial, and rejected Prosecution contentions that the decision gave

[21] *Id*.
[22] Prosecutor v. Taylor, Case No. SCSL-03-01-1055, Defense Response to Prosecution Urgent Application for Leave to Appeal Decision Excluding the use of Custodial Statement of Issa Sesay, 19 August 2010, paras 12 – 17 [hereinafter "Defense Response to Prosecution Motion to Appeal"].
[23] *Id*., paras 18 – 20.
[24] *Id*., para 21.
[25] Decision on Appeal, pg. 6.
[26] Decision on Documents, para 27.
[27] *Id*.

rise to "novel issues of law."[28] The Court concluded that the Prosecution had sufficient information at its disposal to cross-examine Sesay effectively and therefore could not claim "irreparable prejudice."[29] It concluded by holding that the Prosecution had not met the test for leave to appeal.[30]

c. Defense Motions for Admission of Documentary Evidence

Nearing the conclusion of the Defense case, Counsel for the Accused sought admission of certain documentary evidence under Rule 92*bis*. The rule allows for introduction of written statements in lieu of oral testimony, as long as the statements are not offered to prove the acts and conduct of the Accused.[31] The SCSL Appeals Chamber has held that Rule 92*bis* allows admission of "'information' – assertions of fact (but not opinion) made in documents or electronic communications – if such facts are relevant and their reliability is 'susceptible to confirmation,'" [32] and provided the statements in questions are not tendered through a witness. [33] The Defense requested admission of parts of a report by the International Center for Transitional Justice on the Liberian Truth and Reconciliation Commission, autopsy reports of Enoch Dogolea, information about the Sierra Leone Special Task Force, and several other documents.

i. <u>ICTJ Report on Liberian Truth and Reconciliation Commission</u>

The Defense moved to admit portions of a report written by the International Center for Transitional Justice (ICTJ) on the Liberian Truth and Reconciliation Commission (Liberian TRC).[34] The Defense declared that the report was relevant and would influence the probative value of evidence stemming from the Liberian TRC introduced by the Prosecution. The Prosecution has relied on the Liberian TRC report in cross-examining Defense witnesses, and previously introduced excerpts from the Commission's report as exhibits. The Defense hoped that the ICTJ report, critical of the Liberian TRC,[35] would call into

[28] Prosecutor v. Taylor, Case No. SCSL-03-01-T-1062, Decision on Urgent Application for Leave to Appeal Decision Excluding the Use of Custodial Statement of Issa Sesay, 25 August 2010, pg. 5 [hereinafter "Decision on Appeal"].
[29] Decision on Appeal, pg. 5.
[30] *Id*., pg. 7.
[31] Rules, Rule 92*bis*.
[32] Prosecutor v. Taylor, Case No. SCSL-03-01-1077, Decision on Public with Annex A Defense Motion for Admission of Document Pursuant to Rule 92*bis* – ICTJ Report on Liberian Truth and Reconciliation Commission, 16 September 2010, pg. 4, citing Prosecutor v. Norman et al., Fofana – Decision on Appeal Against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 16 May 2005, para 26.
[33] Prosecutor v. Taylor, Case No. SCSL-03-01-1060, Defense Motion for Admission of Document Pursuant to Rule 92bis – ICTJ Report on Liberian Truth and Reconciliation Commission, 25 August 2010, para 5 [hereinafter "Defense Motion for ICTJ Report"], citing Prosecutor v. Taylor, Case No. SCSL-03-01-721, Decision on 'Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents', 6 February 2009, para. 34; Prosecutor v. Taylor, Case No. SCSL-03-0 1-721, para 30-31. *See also* Taylor, Case No. SCSL-03-01-T-556, Decision on Prosecution Notice Under Rule 92*bis* for the Admission of Evidence Related to Inter Alia Kenema District and on Prosecution Notice Under Rule 92*bis* for the Admission of the Prior Testimony of TF1-036 Into Evidence, 15 July 2008, pg. 4.
[34] Paul James-Allen, Aaron Weah, and Lizzie Goodfriend, "Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia," International Center for Transitional Justice, May 2010 [hereinafter ICTJ Report].
[35] In particular, the Defense notes that the report finds that the Liberian TRC report "lacks evidentiary lacks evidentiary data to support many of its claims and there are inadequate references to substantiate the information on which the conclusions are based"; "the absence of any explicit reference to these sources throughout the

question the probative value of the Commission's findings and the evidence related to it.[36] As noted above, Rule 92*bis* only allows for the introduction of assertions of fact, and therefore the Defense contended that the section of the ICTJ Report it hoped to introduce was "primarily fact-based" as it "highlight[ed] the absence of proper citations and support for the TRC findings," among other facts.[37]

The Prosecution opposed the motion, arguing that the ICTJ Report was irrelevant and largely opinion evidence. [38] The Prosecution motion attempted to contextualize the ICTJ Report and demonstrate that the report did not undermine the conclusions of the Liberian TRC.[39] Moreover, the Prosecution argued that "evidence relevant only to the *credibility of credibility evidence*" is too collateral to be relevant or admissible.[40] In the alternative, the Prosecution requested the Court to admit the *entire* ICTJ Report and Liberian TRC Report for proper context. In a reply, the Defense argued that although the report does contain opinion evidence, this should not preclude admission of the report since the opinions do not relate to the guilt or innocence of the Accused. Alternatively, the Defense requested that the Court admit only the factual sections of the report.

The Court denied the Defense motion. The Court found that the ICTJ report was essentially opinion evidence and therefore inadmissible under Rule 92*bis*. Given that the whole of the report was "influenced by the authors' views and opinions," the Court found that it would be impractical to admit portions of the report in isolation.[41]

ii. Autopsy Report of Enoch Dogolea

The Defense also sought admission of an autopsy report and related information surrounding the death of former Liberian Vice President Enoch Dogolea. Prosecution witness Joseph "ZigZag" Marzah, TF1-399, testified that on Taylor's orders he and others had beaten Dogolea almost to the point of death. Marzah claimed that Dogolea later died as a result of the beating. Taylor refuted this claim, testifying that Dogolea died of hepatitis. Dogolea's wife, Regina Mehn Dogolea, also testified for the Defense, telling the Court that her husband had died of an illness, not by murder. The Defense argued that the Court should admit the autopsy reports (four individual documents) as corroboration of Taylor's and Dogolea's testimony, and to discredit Marzah's testimony.

The Prosecution opposed admission of the documents, claiming that 1) their reliability could not be confirmed; 2) they did not contain sufficient indicia of reliability; and 3) the documents contained

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narrative makes it difficult to substantiate the validity of the report 's factual accounts"; and "factual information . . . is not always reliably referenced . . . ." Defense Motion for ICTJ Report, para 7, citing ICTJ Report pg. 14.

[36] *Id*., para 6.

[37] *Id*., para 16.

[38] Prosecutor v. Taylor, Case No. SCSL-03-01-1067, Prosecution Objection to Public with Annex A Defense Motion for Admission of Document Pursuant to Rule 92*bis* – ICTJ Report on Liberian Truth and Reconciliation Commission, 30 August 2010, para 9 [hereinafter "Prosecution Objection to ICTJ Report"].

[39] *Id*., para 5.

[40] Prosecution Objection to ICTJ Report, para 7. The Prosecution argued, "By definition a review and critique is the author's opinion . . . the authors declare that the purpose of the ICTJ Report as a whole was to make proposals and suggestions – in other words provide opinions."

[41] Prosecutor v. Taylor, Case No. SCSL-03-01-1077, Decision on Public with Annex A Defense Motion for Admission of Document Pursuant to Rule 92bis – ICTJ Report on Liberian Truth and Reconciliation Commission, 16 September 2010, pg. 4.

opinion. The Prosecution argued that there was no evidence on the record that could corroborate the medical findings and opinions in some of the documents. Moreover, the Prosecution argued, the opinions expressed in two documents were expert opinions, and the Defense should have moved for their admission under Rule 94*bis*, not 92*bis*.[42] The Prosecution characterized the Defense strategy of using Rule 92*bis* as one of avoidance, or trying to add "two expert witnesses via the back door."[43] According to the Prosecution, expert reports and statements can only be admitted under Rule 92*bis* when, in addition to meeting the Rule 92*bis* test, the right of the opposing party to cross-examine the expert is first evaluated under Rule 94*bis*(C). The Prosecution requested the right to cross-examine the experts, should the Court admit the autopsy reports.

The Court dismissed the Defense motion. It held that the medical opinions expressed in the documents were ostensibly expert opinions, and that therefore the documents were inadmissible under Rule 92*bis*. The Court also found that the Defense had failed to follow the procedure set out in Rule 94 for admission of expert witness statements.

iii. Special Task Force Documents

In another motion, the Defense requested admission of eleven documents that related to the Special Task Force (STF) of the Sierra Leonean Army (SLA). The Defense argued that the documents fulfill the requirements of Rule 92*bis* (described above) and would corroborate evidence on the record about the STF and explain the presence of Liberian fighters in Sierra Leone during the conflict. The Prosecution alleged that the presence of Liberian fighters in Sierra Leone is evidence of Taylor's links with the RUF and AFRC, and the Defense sought to introduce the documents in lieu of oral evidence that the Liberians were former ULIMO soldiers fighting as a part of the SLA. In spite of the Prosecution's objections to two of the documents on the grounds of irrelevancy, the Court granted this Defense motion in full.

iv. Contemporaneous Documents

The Defense sought admission of five documents that it argued were contemporaneous records of events related to the case, including:

- A letter and a report concerning the political activities of the AFRC;
- A letter corroborating Issa Sesay's testimony that he requested a satellite phone from ECOWAS leaders and Nigerian President Obasanjo's efforts to provide Sesay the phone vis-à-vis Taylor;
- A newspaper article about the relocation of Prosecution witness Abu Keita; and
- A letter explaining the presence and allegiance of Liberians in the Sierra Leone.

The Prosecution had no objection to the admission of these documents, and the Trial Chamber granted the Defense motion.

[42] Rules, Rule 94*bis*.

[43] Prosecutor v. Taylor, Case No. SCSL-03-01-1066, Public with Confidential Annex Prosecution Objections to Public with Confidential Annexes A, B, C and D Defense Motion for Admission of Documents Pursuant to Rule 92*bis* – Autopsy Report, 30 August 2010, para 6.

d. Defense Motion Requesting Disclosure of Information Regarding DCT-097

Returning to an issue that played a significant part of the Defense strategy during the Prosecution's case-in-chief, the Defense filed a motion requesting disclosure of payments made by the Prosecution to Defense witness DCT-097. The Defense argued that under Rule 68, the Prosecution has an ongoing obligation to provide the Defense with potentially exculpatory material. The Defense argued that the Prosecution had failed to meet the Rule 68 disclosure requirements by failing to provide information about a statement made by DCT-097 to Global Witness in 2001 and an accounting of an estimated $30,000 transferred by the Prosecution to DCT-097 from 2004 to 2006. Once the Defense had disclosed the name of DCT-097 to the Prosecution in May 2010, Counsel for the Accused argued, the Prosecution should have disclosed the information immediately. The Prosecution eventually disclosed nine statements or communications related to DCT-097, but did not disclose anything regarding the Global Witness statement or the payments.

According to the Defense, the Witness claimed that a Global Witness employee had interviewed him in 2001 about his involvement in trading diamonds for the RUF in Monrovia during the Sierra Leone conflict. He had allegedly told Global Witness that the RUF was not trading diamonds with Taylor or the Liberian government, even though this is what Global Witness hoped DCT-097 would confirm. Purportedly, the same Global Witness employee who had interviewed him in 2001 later approached him for the SCSL Prosecution in 2004. The Witness told the Defense that the Prosecution wanted him to corroborate statements from other sources that he was the main person who delivered diamonds to Taylor. He also said that he was paid $1200 a month by the Prosecution during the period he was being interviewed by the Prosecution. The allowance, paid in cash or by MoneyGram, was ostensibly paid for general "upkeep." The Witness told the Defense that in 2006, the Prosecution told him he was not giving them what they needed and subsequently stopped the payments. The Defense told the Court it had received copies of seventeen MoneyGram receipts showing payments from five different Prosecution employees to the Witness in sums such ranging from $800 to $2000.[44]

According to a previous decision in the *Taylor* trial, the Defense must meet the following test before the Trial Chamber will order disclosure from the Prosecution:

1) Identify the material sought with the requisite specificity;
2) Make a *prima facie* showing of the exculpatory or potentially exculpatory character of the materials requested;
3) Make a prima facie showing of the Prosecution's custody or control of the materials requested; and
4) Show that the Prosecution has in fact failed to disclose the targeted exculpatory materials.[45]

[44] For a complete list of the receipts the Defense claims it has on file, see Prosecutor v. Taylor, Case No. SCSL-03-01-1039, Defense Motion for Disclosure of Statement and Prosecution Payments Made to DCT-097, 4 August 2010, Annex F, [hereinafter "Defense Motion for DCT-097 Disclosures"].

[45] *Id*., para 15, citing Prosecutor v. Taylor, Case No. SCSL-03-01-770, Decision on Defense Motion Pursuant to Rules 66 and 68 for the Disclosure of Exculpatory Material in Redacted Witness Statements of Witnesses the Prosecution does not Intend to Call, 30 March 2009, para 13.

The Defense argued that the requested materials were exculpatory, as they tended to prove that Taylor was not connected with RUF diamond trading and that the Prosecution must have them in its control. The Defense also posited that since the Prosecution purportedly contacted DCT-097 on the basis of the Global Witness statement, the Prosecution must have the statement in its custody or control, or at least be familiar with the contents of the statement. Moreover, the Defense averred that the payments to the Witness impacted the credibility and reliability of the Witness statements disclosed by the Prosecution. To support this position, the Defense pointed to an admission from former Prosecutor Stephen Rapp indicating that information about payments made to Witnesses may affect the credibility of evidence.[46] It also noted a decision by the ICTR stating that information about benefits paid to witnesses "beyond that which is reasonably required" for witness management purposes has a "different character" and should be disclosed as evidence that may affect the credibility of witnesses.[47]

Opposing the Defense motion, the Prosecution maintained that it had fully discharged its disclosure duty under Rule 68. The Prosecution denied having the material in its possession, and claimed to be unaware that any such material existed. Defense allegations that the Global Witness statement must have prompted the Prosecution to contact DCT-097 in the first place were mere speculation, Prosecutors argued. The Prosecution noted that DCT-097 had never been a Prosecution witness. The Prosecution further contended that the Defense motion failed to establish that the information it sought was exculpatory or potentially exculpatory.

In a reply, the Defense alleged that the Prosecution's arguments were "a blatant attempt . . . to use semantics in order to evade its responsibility to disclose exculpatory information."[48] The reply noted that the Prosecution had not denied knowledge of the statement nor had it denied making payments to DCT-097. Rather, the Defense suggested, the Prosecution relied on narrow definitions of what it was required to disclose. The Defense argued that DCT-097 was in fact a Prosecution witness, albeit one that the Defense intended to call to testify in the *Taylor* trial. "[T]he fact that the Defense now intends to call a witness who has also been considered a Prosecution witness does not relieve the Prosecution of its obligation to disclose materials."[49] Although the Defense accepted that the Prosecution bore no formal affirmative obligation to search out exculpatory material, Counsel for the Accused argued that the Prosecution should strive to obtain such information or inform the Defense of its existence. The Defense argued, "[G]iven the demonstrated level of cooperation between Global Witness and the Prosecution in investigating the conflicts in West Africa, the Prosecution is clearly better placed than the Defense to obtain this Statement from Global Witness."[50] In support of its reply, the Defense submitted an email sent to the Defense by Global Witness, stating that Global Witness no longer had the requested information and therefore could not provide it to the Defense.[51]

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[46] Defense Motion for DCT-097 Disclosures, paras 20.

[47] *Id*., paras 20 and 22, citing Prosecutor v. Karemera et al., Case No. ICTR-98-44-PT, Decision on Defense Motion for Full Disclosure of Payments to Witnesses and to Exclude Testimony from Paid Witnesses, 23 August 2005, para 7.

[48] Prosecutor v. Taylor, Case No. SCSL-03-01-1053, Addendum to Defense Reply to Prosecution Response to Defense Motion for Disclosure of Statement and Prosecution Payments Made to DCT-097, 19 August 2010, para 1 [hereinafter "Defense Reply on DCT-097 Disclosures"].

[49] *Id*., para 12.

[50] *Id*., para 8.

[51] Prosecutor v. Taylor, Case No. SCSL-03-01-1053, Addendum to Defense Reply to Prosecution Response to Defense Motion for Disclosure of Statement and Prosecution Payments Made to DCT-097.

The Trial Chamber granted the Defense motion in part. The Chamber ruled that the Prosecution must disclose information relating to payments made by the OTP to DCT-097. However, the Chamber also held that the Prosecution was not obligated to disclose the alleged statement made by the Witness to Global Witness. The Chamber found that there was evidence that suggested the Prosecution had been in contact with DCT-097 when he was a potential Prosecution witness. The Court noted that Rule 68(B) does not limit disclosure of exculpatory materials relating only to Prosecution witnesses, but is broader. The Court concluded that the Defense failed to make a *prima facie* showing that the Global Witness statement existed, or that the alleged statement met the other elements of the test for mandated disclosure. Adopting the view of the ICTR in *Karemera*, the Court found that since the Prosecution did not contest the contents of the cited money transfers and the funds were transferred by Prosecution employees, the Prosecution should have disclosed information about the transfers to the Defense.[52]

e. Defense Motion to Exclude Evidence Outside the Jurisdiction of the Court

In another motion during this reporting period, the Defense objected to evidence falling outside the temporal scope of the Indictment and/or the jurisdiction of the Court ("ex-temporal evidence") and evidence falling outside the geographical jurisdiction of the Special Court ("ex-territorial evidence"). The Defense considered the "ex-temporal" and "ex-territorial" evidence introduced by the Prosecution to be irrelevant, not in the interests of justice and in violation of Article 17 of the SCSL Statute and Rule 95 of the Rules of Procedure and Evidence.[53] The Defense acknowledged that such evidence can provide "context" for alleged crimes, but argued that in the *Taylor* case there was "so much evidence outside the scope of the Indictment . . . that it amounts to prejudice of such a nature that it far outweighs any probative value of such evidence."[54] Accordingly, the Defense requested that the Trial Chamber exclude or limit consideration of evidence falling outside the scope of the indictment.

The Prosecution responded that the motion amounted to an improper and untimely request for reconsideration of Defense objections the Chamber had already overruled during the Prosecution case-in-chief. According to the Prosecution, the Defense was obliged either to object at the earliest opportunity, or to demonstrate that Taylor's ability to defend himself has been materially impaired. The Prosecution argued that the contested evidence did not materially impair Taylor's Defense, as the Defense was aware of the Prosecution's intention to lead ex-temporal and ex-territorial evidence from the beginning of the trial. Prevailing international jurisprudence, Prosecutors argued, routinely allows ex-territorial and ex-temporal evidence to prove the *actus reus* of the criminal conduct, the *mens rea* of the Accused, and the chapeau requirements of Articles 2, 3 and 4 of the Statute, as well as to provide context for the offences. The Prosecution further argued that the volume of the disputed type of evidence was not valid grounds for exclusion. Because the burden of proof rests with the Prosecution, and because the crime-base and most other matters in the Indictment remain disputed by the parties, the Prosecution argued that the case was justifiably voluminous.

[52] Prosecutor v. Taylor, Case No. SCSL-03-01-1084, Decision on Defense Motion for Disclosure of Statement and Prosecution Payments made to DCT-097, 23 September 2010, para 22, citing Prosecutor v. Karemera et al., Case No. ICTR-98-44-PT, Decision on Defense Motion for Full Disclosure of Payments to Witnesses and to Exclude Testimony from Paid Witnesses, 23 August 2005, para 7.

[53] Special Court for Sierra Leone, Statute, Article 17; Rules, Rule 95.

[54] Prosecutor v. Taylor, Case No. SCSL-03-01-T-1086, Defense Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone, 24 September 2010, para 15.

The Defense replied that the Prosecution failed to grasp the essence of the original complaint, which argued that the total amount of the disputed evidence violates Rule 95 and the Accused's fair trial rights of Article 17. Regarding the Prosecution's timeliness argument, the reply noted that the Defense had continuously raised objections to the disputed type of evidence throughout the trial. In any event, the Defense averred, there was nothing in the Rules or in international jurisprudence suggesting that the motion should have been filed at the end of the Prosecution case. The Defense refuted Prosecution claims that the objections in the motion were inadequately specific. The Defense further argued that international jurisprudence clearly identifies probative value and prejudice, in addition to relevance, as factors that should be taken into account when assessing evidence. The Defense tried to distinguish this case from others, arguing that none of the international jurisprudence cited by the Prosecution dealt with a case with such an excessive amount of ex-territorial or ex-temporal evidence as the Prosecution had introduced in *Taylor*.

The Trial Chamber dismissed the Defense motion, calling it premature. According to the Judges, these were matters to be determined at the end of trial after having considered the total amount of admitted evidence. The Court found that the issues would be more appropriately addressed in the parties' final briefs and closing arguments.

f. Defense Motion Requesting Investigation into Contempt of Court by the OTP and its Investigators

The final Defense motion raised during this reporting period alleged abuse of process for the way the Prosecution has conducted its investigations. The motion requested an independent investigation into the OTP and its investigators.[55] The Defense alleged that the OTP had brought the administration of justice into disrepute, and should be held in contempt of the SCSL. The Defense cited an SCSL Appeals Chamber holding that the standard for an independent investigation into contempt is: "[. . .] not that of a *prima facie* case, which is the standard for committal for trial. It is the different and lower standard of 'reason to believe' that an offence *may* have been committed, which is the pre-condition for ordering an independent investigation." [56] Citing confidential affidavits,[57] the Defense declared that that there is reason to believe an offence may have been committed, and alleged that the Prosecutor, including David Crane and all of his successors, are responsible for having:

1) Assaulted a suspect and/or potential witness or source;
2) Exerted undue pressure by threatening, intimidating, or harassing suspects, witnesses, potential witnesses or sources ("undue pressure"); and

[55] Rules, Rule 77(A)(iv) and Rule 77(C)(iii).
[56] Prosecutor v. Taylor, Case No. SCSL-03-01-1089, Defense Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 24 September 2010 [hereinafter "Defense Contempt Motion"], para 9, citing Prosecutor v. Taylor, Case No. SCSL-03-01-960, Confidential Decision, 8 December 2008, para 22, citing Prosecutor v. Brima et al., Case No. SCSL-04-16-AR77-315, Decision on Defense Appeal Motion Pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005 [hereinafter "AFRC Contempt Appeal Decision"], para 17.
[57] Including statements from Defense witnesses DCT-133, DCT-086, DCT-102, DCT-032, and DCT-097.

3) Offered and/or provided improper, unjustifiable or undue payments, benefits or other incentives, including relocation, to witnesses, potential witnesses or sources ("improper inducements").[58]

The Defense argued that the alleged misconduct throws all of the Prosecution's evidence into doubt and has impinged upon Taylor's rights to a fair trial.

In response, the Prosecution argued that the motion was untimely, failed to establish that there was reason to believe the Prosecution or members of the OTP had committed any of the alleged offences, and amounted to nothing more than an attempt to delay the proceedings. The Prosecution disagreed with the Defense on the standard for determining whether an independent investigation into contempt should be ordered. According to the Prosecution, the allegations must be credible[59] and the party requesting an investigation has a duty to raise the issue without undue delay.[60] The Prosecution further suggested that the Court should evaluate the sworn affidavits relied upon by the Defense, taking into consideration the character and bias of the persons giving the statements. The Prosecution attacked the credibility of the affidavits, arguing that the Defense allegations "are based on the statements of admitted liars and a person with an ongoing financial relationship with the Accused; speculation; a misrepresentation of WMU's mandate; matters already subjected to cross-examination; inaccuracies, and irrelevant documentation."[61]

The motion remained under consideration by the Trial Chamber during this reporting period.

g. Legal Issues Arising During Testimony of DCT-008

During DCT-008's cross-examination, the Defense objected to the introduction of various pieces of Prosecution evidence.

i. Defense Objection to Admission of Satellite Images and a Hand-Drawn Diagram

During cross-examination, the Prosecution sought to question Witness DCT-008 using four satellite images taken from Google Earth, along with a sketched diagram. The Defense objected that the documents lacked relevance to the indictment period, that the source of the documents was unknown and that the two images had been marked outside Court. The Defense also argued that the sketch did not include a reference of scale, and was therefore confusing to the Witness.

The documents were relevant to impeach the witness on matters of geographic testimony, the Prosecution argued. The Prosecution argued that the markings made outside Court were done by the OTP, and were therefore permissible, and denied that the sketch was confusing. The Court overruled the Defense objections. The Bench held that, since the Witness had already commented on the satellite

[58] Defense Contempt Motion, para 11.
[59] Prosecutor v. Taylor, SCSL-03-01-1097, Prosecution Response to 'Public with Confidential Annexes A-J and Public Annexes K-O Defense Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 4 October 2010, para 5 [hereinafter "Prosecution Response to Contempt Motion"], citing AFRC Contempt Appeal Decision, para 17.
[60] *Id*., para 5, citing AFRC Contempt Appeal Decision, para 2.
[61] Prosecution Response to Contempt Motion, para 11, internal citations omitted.

images, they formed part of his testimony. The Court did not consider that the sketch was confusing, but agreed to give due weight to the points raised by the Defense when assessing the witness' answers under cross-examination.

ii. Prosecution Application for Disclosure of Witness Statements of Witness DCT-008

As it has with past Defense witnesses, the Prosecution applied for disclosure of all of DCT-008's six witness statements. The Prosecution argued the statements should be disclosed because "this witness's testimony has basically been re-invented since the summary disclosed on . . . 12 of May of this year."[62] Both the Defense and the Prosecution reiterated arguments previously raised throughout the trial on this matter.[63] As with previous motions on the issue, the Trial Chamber dismissed the application.[64]

iii. Defense Objection to Prosecution Use of a Video during Cross-Examination

During the cross-examination of DCT-008, the issue of "fresh evidence" arose again.[65] In order to impeach both the Witness' and Taylor's testimony on the 1995 NPFL disarmament program, the Prosecution sought permission to show video footage in Court. A text transcript of the video had been previously admitted into evidence, but the video had not been previously shown in court. The Defense objected on the grounds that this amounted to "fresh evidence" not merely offered for impeachment. The Defense argued that the video went beyond the scope of the Witness' testimony, seeking to prove the guilt of the Accused by evincing a consistent pattern of conduct.

The Judges refused to allow the Prosecution to show the video footage in Court. According to the Bench, there was nothing to be gained from showing the video. According to the Judges, if the Prosecution wanted to impeach the Witness' testimony, it was possible for the Prosecution to read the text to him instead of showing the video.

5. Witness Testimony

a. Naomi Campbell

The Prosecution's 92nd witness, Campbell testified on August 5, 2010. Her testimony lasted approximately an hour and a half, and was the subject of intense media scrutiny.

Campbell testified that she met Taylor at a dinner she attended at Nelson Mandela's home in

[62] *Taylor*, Trial Transcript, 2 September 2010, pg. 25 (line 12-13).
[63] Applications for access to or disclosure of witness statements have been a frequent issue in the Taylor case. *See e.g.,* Charles Taylor Monthly Trial Report (February 22, 2010 – March 31, 2010) pgs. 2- 4; Charles Taylor Monthly Trial Report (June 1, 2010 – June 30, 2010), pg. 3.
[64] The Judges addressed a similar issue previously; see for example Charles Taylor Monthly Trial Report (February 22, 2010 – March 31, 2010) pgs. 2- 5 (Allowing the requested disclosure of witness statements in one of three instances); Charles Taylor Monthly Trial Report (June 1, 2010 – June 30, 2010), pg. 3 (Ordering the disclosure of the Defense witness statement).
[65] The issue of "fresh evidence" had been discussed previously. *See e.g.,* Charles Taylor Monthly Trial Report (November 10, 2009 – February 18, 2010), Section 3, pg.4; "Objection Relating to Documentary Evidence" Section 4(a), pgs. 4-5.

September 1997. She claimed that Taylor arrived after the other guests had started dinner, and that he engaged in general conversation with the table, explaining to the guests who he was and where he was from. Campbell said that at the time, she had never heard of Taylor or the country of Liberia. Campbell claimed that after retiring early to her room, she was awoken by two men she did not know who came to her room. Campbell claimed that she did not know who the two men were, that they did not introduce themselves to her and that she never learned who they were. The two men allegedly said, "A gift for you," and gave Campbell a pouch, which she put next to her bed without looking inside. Campbell testified that she first looked inside the pouch the following morning, at which time she discovered what she described as "a few stones . . . very small, dirty looking stones."[66] The Witness told the Judges that she did not know who the gift was from—either at that time or later. Campbell claimed that she did not ask the men why they were giving her the stones because she gets "gifts given to [her] all the time at any hour of the night."[67]

She explained, "the next morning, at breakfast, I told Ms. Farrow and Ms. White what had happened, and one of the two said, 'Well, that's obviously Charles Taylor,' and I just said, 'Yeah, I guess it was.'"[68] The Witness claimed that either Farrow or White (she could not recall which) told her the stones were diamonds, but Campbell told the Court she did not remember showing them the stones. She testified that she assumed that the conjecture was correct—that the stones were diamonds from Charles Taylor. When asked by the Presiding Judge what she thought the stones were, Campbell replied:

> They were kind of dirty looking pebbles. They were not - they were dirty. I don't know. I find when I'm used to seeing diamonds, I'm used to seeing diamonds shiny and in a box, you know. That's the kind of diamonds I'm used to seeing. So I've never seen - if someone hadn't said they were diamonds I wouldn't have guessed right away that they were diamonds.[69]

Campbell testified that after breakfast, she took the stones to a trusted friend by the name of Jeremy Ractliffe (then-head of the Nelson Mandela Children's Fund) so that he could "do something" with the stones. Campbell testified that she "did not want them."[70]

During cross-examination, the Defense suggested that it was "pure speculation" that the diamonds had come from Taylor. Campbell confirmed that she simply assumed the gift was from Taylor, based on Farrow or White's suggestion that this was the case. The Defense then focused on gathering information to impeach the anticipated testimony of Farrow and White. Using notes from prior Prosecution interviews with the other witnesses, Counsel for the Accused asked Campbell for her own version of details. Campbell refuted several points in White's version of events. According to Campbell, she was alone in her room when the men delivered the diamonds, not with White. Campbell confirmed speaking with Taylor during dinner, but denied that she sat next to him, and testified that she had not given Taylor her phone number. As for White's claim that Campbell and Taylor had flirted during the dinner, Campbell called this and every other major narrative discrepancy "a lie." The Defense repeatedly mentioned the current legal dispute between White and Campbell. When asked whether White was a

[66] *Taylor*, Trial Transcript, 5 August 2010, pg. 11 (lines 5 – 7)
[67] *Taylor*, Trial Transcript, 5 August 2010, pg. 21 (lines 6 – 7).
[68] *Taylor*, Trial Transcript, 5 August 2010, pg. 10 (lines 2 – 5).
[69] *Taylor*, Trial Transcript, 5 August 2010, pg. 13 (lines 20 – 25).
[70] *Taylor*, Trial Transcript, 5 August 2010, pg. 12 (line 1).

woman with "a powerful motive to lie about" Campbell, the Witness answered in the affirmative.[71] Campbell further denied that she showed Farrow and White the diamonds or told them about their size.

During re-examination, the Prosecution asked Campbell why she had previously declined to make public comments about the alleged gift. Campbell responded that she had been afraid for her family. The Prosecution also asked Campbell whether fear of the Accused led her to deliver testimony that was not entirely true. The Defense objected, arguing that the Prosecution could not impeach its own witness. The Presiding Judge agreed, prompting the Prosecution to state for the record that for practical purposes it considered Campbell a witness of the Court, not a Prosecution witness, because the Prosecution had not had any contact with Campbell before her appearance in Court. Justice Sebutinde responded that as Campbell was subpoenaed at the Prosecution's request, she was in fact a Prosecution witness.

b. Mia Farrow

The 93rd Prosecution witness, actress Mia Farrow, testified for approximately three and a half hours on August 9, 2010. She had also been present at the Mandela charity dinner in 1997, and testified about Campbell's declaration that she had received a diamond from Charles Taylor. Farrow's account differed substantially from Campbell's with respect to the number and size of diamonds received and the question of whether Campbell's knew who they came from.

Farrow testified that when she arrived, Graca Machel, Mandela's then-girlfriend, told her that Farrow did not want to be photographed with Charles Taylor. Machel reportedly told Farrow that Taylor should not have been a guest at the dinner. Farrow told the Court that the morning after the dinner, Campbell told Farrow and others at breakfast that she had "been awakened, [by] some men [who] were knocking at the door and they had been sent by Charles Taylor and they . . . had given her a huge diamond."[72] According to Farrow, Campbell said the gift was a single large diamond as opposed to several small diamonds. Farrow admitted that Campbell had never shown her the gift, but claimed that the suggestion that the diamond had come from Taylor was entirely Campbell's. "Naomi Campbell said they came from Charles Taylor," Farrow told the Court.[73] Further contradicting Campbell's testimony, Farrow testified that Campbell told Farrow and White about the diamond and about her intention to donate it at the same time.

In cross-examination, the Defense highlighted Farrow's inability to recall a number of details asked of her, as well as Farrow's lack of personal knowledge about the events at issue. Farrow acknowledged that she was not present with Campbell when the men arrived to present the gift, did not know the men's nationalities or identities, did not know what country the diamond or diamonds had come from, and could not say why someone would send such a gift to Campbell. The Defense challenged Farrow's testimony that the gift was a single large diamond, pointing out that both Campbell and White indicated that there were multiple small diamonds, and contemporaneous news reports stating that Jeremy Ractliffe (director of Mandela's charity) had received three small diamonds from Campbell. However, Farrow stood by her account, telling the Court:

[71] *Taylor*, Trial Transcript, 5 August 2010, pg. 27 (lines 6 – 8).
[72] *Taylor*, Trial Transcript, 9 August 2010, pg. 10 (lines 23 – 26).
[73] *Taylor*, Trial Transcript, 9 August 2010, pg. 19 (line 28).

> There could have been dozens. I don't know how many diamonds there were or what state they were in because I didn't see them. I can only tell you, and I swear on the Bible as I have to this Court and beyond, those - that is what Naomi Campbell said that morning at breakfast.[74]

The Defense concluded its cross-examination by attempting to portray Farrow as biased against Taylor. The Defense questioned Farrow on her position as a UNICEF goodwill ambassador focusing on children impacted by armed conflict in Africa. Farrow responded that her focus was on Sudan, Chad and the Central African Republic, not Liberia and Sierra Leone, but admitted that she has publicly made statements about ridding the African continent of impunity. The Judges also had questions for the Witness, including a question from Justice Sebutinde whether Farrow got the idea of a "huge diamond" from having seen the moving "Blood Diamond." Farrow responded that no, the movie had not influenced her memory of what Campbell had said and explained again that Campbell had told her about a single diamond.

c. Carole White

Finally, the 94th Prosecution witness, Carole White, testified on August 9 and 10, 2010 for approximately four hours. Like Farrow's account, White's testimony differed considerably from Campbell's. She testified that she had been the main agent of Naomi Campbell and had accompanied Campbell to South Africa in 1997. She said she stayed either immediately next door or one door down from Campbell during their stay at Mandela's guesthouse. The Witness claimed that she met Taylor at the dinner and was seated three persons down from him, with Campbell directly next to Taylor. According to White, Campbell had told her that Graca Machel was annoyed that Taylor had been invited to dinner. White claimed that at some point during the dinner, Campbell leaned back and told her Taylor was going to give Campbell some diamonds. Taylor was purportedly smiling and nodding in agreement when Campbell said this. White also testified that Campbell and Taylor were mildly flirting during the dinner. After the dinner, she said that Campbell and Taylor's defense minister, whom White testified was also a dinner gust, discussed how to get the diamonds to Campbell. According to White, two men were to collect the diamonds from Johannesburg (a couple of hours away from the President's residence in Pretoria), and bring the diamonds to the guesthouse. White claimed that Campbell was very excited about receiving the diamonds. She reportedly waited in the lounge of the guesthouse with White until about 10:00 p.m., at which point Campbell received a text message or a phone call that the men were nearly there. However, after checking the garden outside twice, the men had still not arrived, so Campbell and White went up to bed. White claimed that, after she left Campbell in her room, White heard someone throwing pebbles at her window. White discovered two men outside her window, asking to be let in so they could give something to Campbell. White testified that she was hesitant to let them in because the house was quiet and there were no sentries or servants around. Instead, she went to tell Campbell about the men. Campbell "really wanted to let them in," according to White, so the two women reportedly unbolted the doors together and let the men into the lounge.[75] White testified that she and Campbell offered the men Coca-Cola and sat with them in the lounge, where they took out a "scruffy paper" that contained five or six diamonds.[76] Soon after, the men left and Campbell and White went back to bed. White testified that she was quite worried about the gift because she knew it was

[74] *Taylor*, Trial Transcript, 9 August 2010, pg. 71 (lines 24 – 28).
[75] *Taylor*, Trial Transcript, 9 August 2010, pg. 127 (lines 6 – 7).
[76] *Taylor*, Trial Transcript, 9 August 2010, pg. 127 (line 18).

illegal to carry diamonds from South Africa out of the country, and supposed that she would be the person carrying the diamonds, not Campbell.

The next morning, according to White, she and Campbell discussed donating the diamonds to Mandela's children's charity. She said that Campbell "eventually agreed" to donate them, and that Campbell later gave the diamonds to Jeremy Ractliffe once on board the Blue Train, which was taking its inaugural trip.[77] She said she did not know how many diamonds Campbell gave to Ractliffe, and that Ractliffe "was quite shocked and looked quite horrified" upon receiving the diamonds.[78] White claimed that Ractliffe initially refused to take the diamonds, but later reluctantly accepted them after Campbell and White insisted.

The Defense's cross-examination focused on the discord between White and Campbell, attempting to discredit her testimony by demonstrating that she was biased against Campbell. Near the start of the cross-examination, the Prosecution objected, arguing that the tone and level of voice of lead Defense Counsel Courtenay Griffiths, QC, was harassing and disrespectful to the Witness. The Presiding Judge cautioned him to keep his tone down. Griffiths questioned White about an alleged "blood diamond" party at her office on the night of Campbell's testimony, and showed Facebook pages of White's employees discussing the testimony. White denied that the party had been themed a "blood diamond" party and said she did not know anything about the Facebook commentary. The Defense also questioned her extensively on her contract dispute with Campbell, suggesting to White that she had a powerful motive to lie about Campbell—to provide ammunition to help White in her lawsuit against Campbell. White denied that this was true, and denied that she had come forward with information about the dinner in South Africa for personal gain. White testified that she did not see how the "blood diamond" issue would be relevant to her contractual dispute.

Moreover, the Defense questioned White's account of how two large men could have entered Mandela's compound in the middle of the night, given that there must have been significant security surrounding the then-president's grounds. White answered that she had no idea of how they had gotten inside the compound, but that it was a question she had asked herself. The Defense suggested that, since Taylor was not in fact staying in the compound, perhaps the two men were not from Liberia at all, but rather were with other guests from the dinner. The Witness said that the men did not specifically say they were bearing a gift from the Liberian President, only that they said they had a gift for Campbell. Griffiths frequently accused White of lying, including about her statement that Taylor and Campbell had been flirting during dinner. The Defense confronted the witness with inconsistent details in her prior statements to the Prosecution, and questioned her about why her account differed significantly from Campbell's. Nevertheless, White consistently stuck to her story on the stand, and denied all suggestions that she was lying or embellishing her testimony.

Under re-examination, the Prosecution asked White whether it was true that Campbell would lose as much as White could possibly win in the current contract lawsuit between them. White answered in the affirmative. The Prosecution likely wanted to demonstrate that if the lawsuit were a motive for White to lie in the *Taylor* trial, it would be an equal motive for Campbell to lie as well. The Prosecution also noted that White had never stated in her testimony that the two men were Liberians, countering a point made by Defense in cross-examination.

[77] *Taylor*, Trial Transcript, 9 August 2010, pg. 129 (lines 8 – 9).
[78] *Taylor*, Trial Transcript, 9 August 2010, pg. 127 (line 15).

d. DCT-172 (Issa Sesay)

Following the days of testimony by Campbell, Farrow and White, the Court returned to the Defense witness list, calling DCT-172, Issa Hassan Sesay, back to the stand. The nineteenth Defense witness, Sesay acted as RUF's interim leader from May 2000 until the end of the conflict in 2002. In February 2009, he was convicted for 16 out of the 18 charges he faced at the Special Court for Sierra Leone.[79] He is currently serving a 52-year sentence in a Rwandan prison. He testified in Krio. His direct examination continued from testimony heard in July. Under direct examination, Sesay testified about the nature and extent of RUF contacts with the Accused, Taylor's involvement with the peace process in Sierra Leone, conflicts between RUF and Guinean forces, sources of RUF munitions, and RUF leadership during the 1999 invasion of Freetown.

i. RUF Contacts with Taylor

Defense Counsel began by asking Sesay to respond to Prosecution witness TF1-338 who had testified that, after the Lome Peace Accords, RUF leader Foday Sankoh stopped in Monrovia to meet with Taylor on his way back to Sierra Leone. According to TF1-338, Sankoh and several RUF members accompanying him (Sam Bockarie included) met Taylor twice. During one of the meetings, Taylor allegedly thanked Bockarie for having "maintained the RUF until Foday Sankoh's return" and for having "secured Foya and Voinjama from the LURD rebels."[80] Sesay acknowledged that Bockarie had indeed traveled to Monrovia, but never told Sesay of any meeting with Taylor. Sesay also denied TF1-338's allegations that RUF troops fought on Taylor's behalf in Foya and Voinjama in 1999:

> How could Charles Taylor thank Bockarie for securing Voinjama and Foya when he was not there. Charles Taylor had his own troops, he had his own army that were in Voinjama and Foya.[81]

Sesay also strongly denied TF1-338's allegations that Bockarie and Sesay had traveled to Monrovia together sometime in 1998-1999, carrying diamonds for Taylor, unbeknownst to RUF diamond miners. According to Sesay, during that time he sent all the mined diamonds to Bockarie, who used some of them "to send food supplies and used clothing, medicine, provision, bales of clothing and plastic sandals to the miners."[82]

The Defense also asked Sesay to respond to TF1-338's testimony about two alleged meetings with Taylor in Liberia in May 2000. According to TF1-338, the first visit was motivated by Taylor's interest in Sankoh's situation, while the second concerned the release of the UNAMSIL personnel in RUF custody. The Prosecution witness had testified that Taylor was interested in the release of the UNAMSIL personnel because he "had . . . been promised that if he spearheaded the release of the UN peacekeepers he would be made the ECOWAS chairman."[83] Taylor allegedly initiated a bargain with Sesay, telling him that if he secured the release of the hostages, Taylor would also return the favor and

[79] *Prosecutor v. Sesay, Kallon and Gbao,* Case No. 2004-15-PT, Corrected Amended Consolidated Indictment, 2 August 2006.
[80] *Taylor*, Trial Transcript, August 2, 2010, pg. 15 (lines 19-22).
[81] *Taylor*, Trial Transcript, August 2, 2010, pg. 17 (lines 6-9).
[82] *Taylor*, Trial Transcript, August 2, 2010, pg. 25 (lines 25-29).
[83] *Taylor*, Trial Transcript, August 2, 2010, pg. 66 (lines 3-5).

support the RUF "in the struggle" with "anything that [Sesay] asked for.[84]

Sesay denied TF1-338's allegations, insisting that he only met with Taylor once in May 2000, and that Taylor's interest in the meeting was only motivated by his desire to see the UNAMSIL personnel released. He further denied having been informed of the possibility of Taylor becoming the Chairman of ECOWAS, or of Taylor's interest in Sankoh's fate. Instead, he told the Court:

> [Taylor] said this is a very big disappointment on the part of Mr. Sankoh, he said, because this has brought a setback to the Lome Accord and that people in the rest of the world, like America, England, he said the things that were happening, they thought Charles Taylor had hands in them. But he said there was a God that knew that he was innocent and had no hands in it and he said this was the worst thing Mr. Taylor could – Mr. Sankoh could ever do in his life.[85]

By contradicting previous testimony that depicted him as Taylor's acolyte, Sesay strengthened the Defense's position that Taylor's interactions with him were solely for the purpose of bringing peace to Sierra Leone and to the region. He further told the Court that some RUF fighters capitalized on the Prosecution's interest in a potential association between RUF leaders and Taylor, knowing that they would be paid as witnesses for the Prosecution if their testimonies were supportive of the Prosecution's case. Sesay's testimony thus suggests that Prosecution insider witnesses lied in order to receive benefits from the OTP.

ii. Taylor's Involvement in the Peace Process

Sesay supported Taylor's claims that his interactions with the RUF were motivated solely by his cooperation with ECOWAS to bring peace to Sierra Leone. However, the Prosecution has maintained that Taylor's commitment to the peace process was a lie, and that when Sesay became interim leader of the RUF, he received instructions from Taylor not to disarm to UN peacekeepers. Sesay dismissed these claims as fabrications, insisting that Taylor played an important role in brokering the peace in Sierra Leone.

iii. Conflicts Between RUF and Guinean Forces

Sesay also addressed the armed conflicts between the RUF and Guinean forces from 1998 to 2000. A Prosecution witness and former RUF member, Abu Keita, had previously told the Court that the RUF's attacks in Guinea were initiated at Taylor's request, as Taylor wanted to see then-Guinean President, Lansana Conté, unseated. Keita had testified that:

> Issa Sesay told us . . . that ex-President Charles Taylor had given him that mission to launch an attack against Lansana Conte in Guinea . . . [and] had given him the arms, ammunition, together with the RPG bombs, to go and fight in Guinea to overthrow Lansana Conte.[86]

[84] *Taylor*, Trial Transcript, August 2, 2010, pg. 66 (lines 9-12).
[85] *Taylor*, Trial Transcript, August 2, 2010, pg. 44 (lines 1-9).
[86] *Taylor*, Trial Transcript, August 6, 2010, pg. 77 (lines 15-17); pg. 78 (lines 2-5).

Sesay denied having received any instructions from Taylor, insisting that the RUF was acting in its own defense after Guinean forces had repeatedly invaded RUF-held territory in Kailahun. Sesay also attacked Keita's credibility, telling the Court that, to his knowledge, Keita fabricated stories against Taylor after receiving assurances from the Prosecution team that he and his family would be sent abroad and given money. When the Prosecution's promises failed, Keita allegedly attempted to initiate legal action against the Prosecutor of the Special Court.

iv. Captured UN Army Materials

Sesay testified that when the RUF detained hundreds of UN peacekeepers in 2000, the group also captured arms, ammunition, vehicles and communication equipment. A Prosecution witness testified in 2008 that some of the weapons were taken across the border to Liberia and given to Taylor. Prosecution witness TF1-375 testified that he personally witnessed some of the weapons being handed to Benjamin Yeaten, who was then Special Security Services (SSS) Director in Taylor's government. TF1-375 also said he was there when Yeaten requested the weapons from Sesay to help the NPFL fight the Liberians United for Reconciliation and Democracy (LURD), a revolutionary group assembled with the goal of unseating Taylor's government. Sesay contradicted TF1-375's account on three fronts. First, he insisted that all the weapons captured alongside the UN peacekeepers were handed back to UN forces before disarmament. Second, he told the Court that his contacts with Benjamin Yeaten took place when the RUF was no longer a combatant group in Sierra Leone, and therefore he could not have had any interest in obtaining weapons and ammunition. Third, he denied that in the aftermath of the RUF's detention of UN peacekeepers he was the one who initially contacted Taylor vis-à-vis a call to Yeaten on a satellite phone (or radio). Instead, he reiterated that it was Taylor who asked to meet with him and discuss the release of UN peacekeepers.

It should be noted that, on the second point, Sesay's testimony was relatively clouded. Initially, he told the court that he had no contact with Yeaten in 2000, but only in 1999. Later, however, he admitted that he made several trips to Liberia in 2000, and did not specifically deny having met Yeaten during those trips:

> Q. According to the evidence of this witness, Mr. Sesay, from 2000 you made about four trips from Benjamin Yeaten to the RUF, which you were leader of at the time, and delivered ammunition.
>
> A. Well, I did not make trips to collect ammunition. I made about five to six trips to Liberia when I was interim leader. But from the - during all the times that I was going to Monrovia, I did not take ammunition to bring to the RUF, no.[87]

v. Attack on Freetown

Also during direct examination, Sesay refuted claims that Sam Bockarie acted as a message intermediary between Yeaten and AFRC rebel forces conducting the 1999 invasion of Freetown. Sesay maintained that this was the first instance he heard of Yeaten's involvement in the Freetown invasion, telling the Judges:

[87] *Taylor*, Trial Transcript, August 11, 2010, pg. 58 - 59 (lines 28-29; 1 – 5).

> I never heard about that, about Benjamin Yeaten's involvement in the January 6 invasion in 1999, except in this courtroom . . . . Even during my trial, I did not hear such misinformation.[88]

Sesay further denied the veracity of testimony from a Prosecution witness (RUF signal commander Mohamed Kabbah, aka "Tourist") who, in September 2008, suggested to the Court that Bockarie had ordered the destruction of Freetown during the 1999 invasion. The same Prosecution witness had also claimed that Yeaten had given orders to Bockarie during the Freetown attack, alluding to Taylor's control over the operation. Sesay maintained his position that the men attacking Freetown were not answerable to Bockarie.

vi. Conclusion of Direct Examination

Sesay concluded his direct examination by insisting that he has nothing to gain from testifying on Taylor's behalf, except for clarifications on his own history as interim leader of the RUF. He testified:

> I have nothing absolutely to gain. The reason why I came here is because I was in Freetown, I used to listen to radios in my cell room, the way of my fellow RUF have been exaggerating stories, lying against me, as a result of the disarm—that I have disarmed the RUF. That was the reason why I also decided to come here. But I have nothing absolutely to gain.[89]

vii. Cross-Examination

Under cross-examination, Sesay answered Prosecution questions about an arms and ammunition purchase in Burkina Faso by RUF leader; Foday Sankoh; the use of child soldiers; whether the conflict in Sierra Leone was properly characterized as a war about diamonds; the nature of the relationship between Taylor and Sankoh; RUF involvement in the 1999 attack on Freetown; alleged personal contacts between various RUF leaders and Taylor; conflicts between the RUF and Guinean forces; and Taylor's alleged plan to kill Issa Sesay.

a. Arms and Ammunition Purchase in Burkina Faso by Sankoh

The Prosecution opened its cross-examination by inquiring about the RUF's alleged purchase of arms and ammunition in Burkina Faso, which supposedly fueled the rebels' attack on Koidu Town in the diamond rich area of Kono in December 1998, and which previous Prosecution witnesses have indicated was mediated by Taylor and transferred through Roberts International Airport in Liberia.[90]

Sesay told the Court that the only shipment received by the RUF during the junta regime was a shipment from Burkina Faso at Magburaka in October 1997. He testified that Sankoh bought the arms and ammunition before travelling to Nigeria (where he was subsequently arrested) and left them in General

[88] *Taylor*, Trial Transcript, August 12, 2010, pg. 25 (lines 23-26).
[89] *Taylor*, Trial Transcript, August 12, 2010, pg. 64 (lines 20-25).
[90] Prosecution witness TF1-539 testified that he was part of the group who made the purchase in Burkina Faso, and that prior to the closing of the deal, he had personally met Taylor at his Executive Mansion to discuss the possibility of obtaining arms from Burkina Faso.

Diendere's custody in Burkina Faso. According to Sesay, Sankoh alerted Bockarie to the upcoming shipment in a letter delivered by Gibril Massaquoi. The same letter supposedly also informed Bockarie that similar letters had been sent to Ibrahim Bah, to General Diendere in Burkina Faso and to Johnny Paul Koroma, who was to provide the money for the transportation of the purchased arms and ammunition. Sesay told the Court that Koroma took $90,000 out of a bank account to pay for two airplane deliveries of the arms and ammunition. However, Sesay said that only one delivery took place as the plane came under attack by Alpha Jets upon arrival in Sierra Leone, and did not return.

Discussing an attempted arms purchase around April 1998, Sesay testified that, after Bockarie placed Koroma under house arrest and confiscated the diamonds in his possession, he allegedly gave those diamonds to Sesay who was to travel with them to Burkina Faso, meet with General Diendere and purchase additional arms and ammunition. Sesay claimed that Ibrahim Bah was to meet him in Monrovia and facilitate the purchase with Diendere. However, Sesay testified that he lost the diamonds—which he said included a variety of industrial grade diamonds and only one valuable diamond of fourteen carats—on a stop in Monrovia on his way to Burkina Faso, and thus could not complete the purchase. The Prosecution suggested that this story was "ridiculous" and made no financial sense, but Sesay claimed that Bockarie was counting on Diendere's friendship with Sankoh and the promise of diamonds to secure the purchase. The story of the lost diamonds is consistent with Sesay's prior testimony in his own trial before the Special Court.

Regarding the weapons purchased for the 1998 attack on Kono, Sesay denied that Bockarie had purchased the weapons in Burkina Faso. Sesay claimed that Bockarie had traveled to Burkina Faso and other African states to discuss the possibility of revisiting the Abidjan Peace Accord. Sesay told the Court that the RUF had bought the arms and ammunition for the attack on Kono in Lofa, Liberia, from a ULIMO battalion commander and from Benjamin Yeaten. Sesay claimed it was this purchase that allowed for the successful attack on Kono, during which the RUF captured material and ammunition that allowed for further attacks on Magburaka, Makeni and Waterloo. Counsel for the Prosecution, however, noted that Sesay was the only witness in the *Taylor* trial to claim that the ammunition was bought in Lofa, and attempted to impeach Sesay by opposing his account of the events in the *Taylor* trial with his account of the events in his own trial:

> Q. You claim in this trial that Sam Bockarie came back to Monrovia from Burkina Faso without any arms and ammunition. He landed in Roberts International Airport, according to you, without any arms and ammunition. Is that right?
>
> A. That was what he told me, that the ammunition that he got—because they were not arms, they were ammunition. He said the ammunition that he had, he had bought from Lofa.
>
> Q. That's something that you remember distinctly now, although you said four times in your own trial the ammunition came from Burkina Faso.[91]

In 2007, during his own trial, Sesay testified that Sam Bockarie had gone to Burkina Faso to get the arms and ammunition used in the attack on Kono. Sesay maintained his current version of events, repeating that he was testifying about the things he could recall. He explained that during his trial his recollection

[91] *Taylor*, Trial Transcript, August 18, 2010, pg. 124 (lines 9-19).

of the events was unclear, and that he had only realized the mistake after he testified, while reading the transcript. The Prosecution pressed the issue of the purchase in Lofa, asking Sesay how Bockarie knew the commanders in Lofa would have ammunition. Sesay responded that Bockarie knew that the commander was commander of an army and would therefore have ammunition. The Prosecution then pointed to Taylor's testimony that the Liberian army did not have any arms or ammunition from the time he became president in 1997 until 2001. Nevertheless, Sesay stuck by his story that Bockarie bought the ammunition from Liberian armed forces in Lofa.

b. Child Soldiers

The Prosecution questioned Sesay extensively on the RUF's recruitment and use of child soldiers, referring back to the testimony of former Sierra Leonean President Kabbah who testified that "the RUF, from the inception to the end of the war, used child soldiers extensively, and this was such a problem that [the Sierra Leonean government] decided to put up some building in Bo as a second city to Freetown where [they took care] of those child soldiers who had lost their parents or were afraid to go to their homes."[92] The Prosecution alleged that the RUF recruited children as young as ten years old and organized them in "Small Boys Units" (SBUs), a concept derived from NPFL troops at Camp Naama, who engaged in similar endeavors. While admitting that children around the age of 14 and 15 did indeed fight alongside RUF troops, Sesay consistently denied having seen children of younger ages within RUF ranks. He further told the Court that he first heard the term "SBU" in Sierra Leone and not in Liberia and that the children at Camp Naama only occasionally took part in military training. Lastly, he insisted that no drugs were distributed to the children in the RUF; instead, he told the Court that marijuana was common among the troops but not something that would be systematically distributed, and no other harder drugs were used.

c. RUF's War—A War About Diamonds?

Sesay resisted Prosecution suggestions that the war in Sierra Leone was a war about diamonds. He told the Court that "[I]t was not a war about diamonds, because from 1991 to 1997, RUF was not mining diamonds. So it was not a war about diamonds. RUF was not occupying or controlling mining areas."[93]

Sesay refuted allegations that he channeled Sierra Leone's diamond resources to Liberia, further insisting that previous witnesses significantly inflated the value of the diamonds exploited by the RUF during the conflict. Sesay said:

> These estimates that are being made, these are diamonds I never saw, these sorts of estimations. I've never seen such diamonds . . . . The mining that we were doing, we were getting small diamonds, and those are the diamonds that I've given account of . . . . [W]as RUF able to see such diamonds when the RUF was unable to buy new vehicles [and] I was buying used vehicles?[94]

Sesay further maintained that he used the diamonds mined in RUF-controlled areas to care for RUF members. Sesay also flatly denied Prosecution allegations that the RUF instituted a regime of forced

[92] *Taylor*, Trial Transcript, August 16, 2010, pg. 54 (lines 5-10).
[93] *Taylor*, Trial Transcript, August 13, 2010, pg. 52 (lines 14-16).
[94] *Taylor*, Trial Transcript, August 13, 2010, pg. 60 (lines 4-10).

labor in the diamond-rich areas, and killed some of the people who could not work as miners. According to Sesay, "the atmosphere . . . in Kono was nice" and "there was no harassment of civilians."[95]

d. Sankoh-Taylor Connection

Counsel for the Prosecution spent two full days questioning Sesay on RUF leader Foday Sankoh's relationship with Taylor, which, the Prosecution alleges, was closer than Taylor led the Court to believe. The Prosecution has maintained that Taylor and Sankoh first met in Libya, where they initiated and refined their plans to invade Liberia and Sierra Leone, respectively, and to support each other in their endeavors. The Prosecution further avers that Sankoh's recruitment and training of RUF fighters at Camp Naama, Liberia, could not have happened without Taylor's acquiescence and support. The Prosecution thus points out that some RUF recruits at Camp Naama were released from NPFL detention centers so that they could join the RUF.[96] Taylor has denied any knowledge of Sankoh's recruitment efforts in Liberia. Under cross-examination, Sesay insisted that it was Sankoh who created the RUF, with the support of "Pa" Kallon (whose wife, Isatu Kallon testified for the Defense in July 2010). Sesay told the Court that while Sankoh referred to Taylor as his friend, he told recruits that he "was the leader for his own revolution."[97]

Sesay did however offer testimony that contradicted Taylor's account of his first interaction with Sankoh. According to Taylor, he never met Sankoh in Libya. Rather, Taylor told the Court, he initiated contact with the RUF leader when NPFL troops came under attack from ULIMO, which then had the support of the government of Sierra Leone. Taylor's decision to contact Sankoh was, by his account, a strategic one, as he had realized that collaboration with the RUF might impede ULIMO's attacks on the NPFL. Sesay gave a different account of Taylor's first contact with Sankoh, explaining that, according to Sankoh, the two had first met in Libya in the late 1980s, and later reconnected in Liberia when both NPFL and RUF forces were training at Camp Naama. Sesay further indicated that the RUF's invasion of Sierra Leone in March 1991 capitalized on the fighting between NPFL troops and the Sierra Leone Army (SLA) in Bomaru, Eastern Sierra Leone and the subsequent distraction of Sierra Leonean forces. He also admitted that NPFL fighters were part of the invading force in Sierra Leone. However, he corroborated Taylor's testimony that, after the withdrawal of NPFL fighters from Sierra Leone in 1992, Taylor cut all contacts with the RUF until 1999, when peace talks were initiated.

e. Taylor's Alleged Command of the RUF

In support of its allegation that Taylor controlled the RUF after Sankoh was jailed in Sierra Leone, the Prosecution questioned Sesay about whether Taylor promoted Sam Bockarie to the rank of General in the RUF. Several Prosecution witnesses have testified that Bockarie claimed Taylor had promoted him to General after returning from a trip to Liberia in 1998. This fact, the Prosecution averred, confirmed that Taylor was indeed the de facto leader of the RUF in Sankoh's absence.

[95] *Taylor*, Trial Transcript, August 13, 2010, pg. 82 (lines 16-18).

[96] Witness for the Defense DCT-131, Isatu Kallon, testified that after NPFL's invasion of Liberia in December 1989, NPFL forces began harassing and detaining individuals whose countries of origin had provided military or logistical support to the Economic Community of West African States Monitoring Group (ECOMOG): Sierra Leoneans, Nigerians and Guineans. According to the witness, Foday Sankoh pleaded with NPFL forces to free the Sierra Leoneans, and was successful in doing so.

[97] *Taylor*, Trial Transcript, August 16, 2010, pg. 135 (line 27).

Sesay reiterated his direct examination testimony, in contravention of the Prosecution theory of RUF command structure. According to Sesay, it was Johnny Paul Koroma (the AFRC leader) who was regarded as the delegated leader of the RUF, after Sankoh instructed the troops that they should take their orders from Koroma. Notwithstanding Sesay's account, Prosecution counsel pressed the issue of Bockarie's promotion, confronting Sesay with pictures individually depicting Bockarie, Taylor's former vice-president, Moses Blah, and Taylor's former Special Security Services Director Benjamin Yeaten, all displaying their military honors (codified as stars) on their red berets. The Prosecution suggested that the stars indicated that they all belonged to the same military order, under Taylor's command. Sesay disagreed with the suggestion, explaining that the uniforms and the berets were common in both Liberia and Sierra Leone, having been taken from ECOMOG soldiers, a common enemy force. When Counsel for the Prosecution pointed out that it was NPFL custom to display the rank stars on the berets, while Sierra Leoneans would wear them on their uniform, Sesay replied that, even though Bockarie had in fact been promoted by Koroma, he could have easily changed the display of his stars.

f. Attack on Freetown

Under direct examination, Sesay had denied that RUF troops participated in the 1999 attack on Freetown, or that the RUF had sent ammunition to support the attack. Sesay acknowledged that Bockarie intended for the RUF to be part of the attack, but as it turned out, AFRC leader Alex Tamba Brima ("Gullit") refused to wait for RUF forces to arrive, and initiated the attack on his own. Sesay maintained his account of the events under cross-examination, telling the Court that Bockarie was initially reticent about supporting the AFRC's attack on Freetown due to his dislike of AFRC commander Solomon James Musa ("SAJ Musa"). It was only after he found out that SAJ Musa was dead that Bockarie decided to send armed reinforcements to Gullit for the attack. However, Sesay told the Court, RUF troops did not reach Freetown in time, because ECOMOG forces stopped them at Waterloo. As the Defense had done during direct examination, the Prosecution confronted Sesay with a BBC radio clip narrating Freetown's attack as being carried out by the "combined forces of the AFRC and RUF."[98] Sesay repeated his prior testimony that the operators were misguided in their observations. In fact, he testified, RUF troops were in Makeni at the time, not Freetown.

g. Meetings with Taylor

Prosecution counsel confronted Sesay with a letter allegedly authored by him and introduced into evidence during Taylor's testimony. The letter—signed under the name "Essa Sesay"—deplored the RUF's status at the time, namely the detention of the group's leader, Foday Sankoh and constant attacks by UN troops. It also solicited Taylor's participation in the peace process. Sesay denied having authored the letter, at which point Prosecution counsel suggested that it could have been written by Taylor's men (the document belonged to the presidential archives) with the intention of using the Witness as a puppet. Sesay denied that he was used by the Liberian government, saying:

> Nobody was using me. I don't know about this letter, and I tell you nobody was using me, because the ECOWAS only used me for me to disarm people, and I did not reap any benefits, but the Liberian government did not use me.[99]

[98] *Taylor*, Trial Transcript, August 19, 2010, pg. 84 (line 28).
[99] *Taylor*, Trial Transcript, August 23, 2010, pg. 85 (line 29); pg. 86 (lines 1-3).

Prosecution counsel also attempted to impeach Sesay on his account of the number of meetings he had with Taylor in May 2000. Under direct examination, Sesay insisted that he had only met Taylor once in May 2000, after having been invited to Monrovia to discuss the potential release of UN peacekeepers. This account coincides with Taylor's own account of the events. The Prosecution team, however, maintains that Sesay visited Taylor twice, purportedly returning to Sierra Leone after the second visit with a shipment of arms and ammunition. According to several Prosecution witnesses, Taylor provided Sesay with these arms and ammunition. The Prosecution confronted Sesay with testimony he gave in his own trial, when he said he travelled to Monrovia twice in May 2000. Sesay rectified the previous account, testifying in the *Taylor* trial that when he travelled to Liberia with the hostages (*i.e.*, the second time) he actually stopped at Foya, never reaching Monrovia, or Taylor.

Sesay also testified that it was Taylor who suggested that Bockarie be allowed to return to Sierra Leone during a meeting they had in December 2000:

> Q. And you remember Charles Taylor asking you to bring Sam Bockarie back to Sierra Leone to rejoin the RUF, correct?
>
> A. Yes. He said we were about making peace now and the peace process was underway, so as an organization it was nice for us to be together, so Sam Bockarie should return to the RUF.[100]

This account directly contradicts Taylor's account, where he testified that he never asked for Bockarie to be allowed back in the country. On the stand, Taylor indicated that he chose to stay out of the Bockarie controversy because a number of ECOWAS leaders regarded Bockarie as an impediment to the peace process and wanted him isolated from it.

h. Conflicts Between the RUF and Guinean Forces

Sesay denied Prosecution allegations that Yeaten provided the RUF with arms and ammunition to launch attacks in Guinea and Liberia against LURD forces. He insisted that, unlike RUF chief leader Sankoh in the early 1990s, Sesay did not fight Taylor's enemies as interim leader. When Sesay clarified that the fighters who crossed the border into Liberia did so "on their own accord," the Prosecution capitalized on the slip and inquired whether Sesay was in fact acknowledging that some RUF troops did cross into Liberia. Sesay replied:

> Well, what I mean, when I asked them to disarm, the vanguards who refused, together with their bodyguards, they crossed over to Liberia. Even Superman, during the disarmament he crossed into Liberia. He said he was going back to his country. I could not force them. And during disarmament I was not in Kailahun, they used to cross over into Liberia. But to say that officially I organized men to send them to Liberia and fight, no.[101]

[100] *Taylor*, Trial Transcript, August 23, 2010, pg. 123 (lines 6-10).
[101] *Taylor*, Trial Transcript, August 25, 2010, pg. 52 (lines 12-19).

i. Daniel Tamba ("Jungle") Connection Between Taylor and the RUF

Several Prosecution witnesses have identified Daniel Tamba ("Jungle") as a focal link between the RUF and Taylor. Jungle allegedly mediated the diamonds-arms exchanges between Taylor and the RUF, travelling between Liberia and Sierra Leone with the respective loads. Prosecution counsel interrogated Sesay about Jungle's status within the RUF and the NPFL, referring to him as "a very good friend" of the Witness. Sesay expressed surprise at suggestions that Jungle was a double agent, and told the Court that as far as he knew, since his crossing from Liberia into Sierra Leone into early 1990s, Jungle was a member of the RUF only, not splitting his allegiances with the NPFL:

> Q. The RUF referred to him as a General because he was a very important person, he was the liaison between Charles Taylor and the RUF, correct?
>
> A. No, Jungle was with the RUF for a long time. He was not a middle man.[102]

The Prosecution introduced evidence to challenge Sesay's claims. The first piece of evidence was a list containing the names of Special Security Services (SSS) members assigned to Taylor's Executive Mansion as part of his "Presidential Advance Team" which included the name Daniel Tamba. The second one was a photograph portraying both Benjamin Yeaten, the SSS Director in Taylor's government, and Jungle. The Prosecution also introduced testimony from Defense witness John Vincent, who had said that Jungle crossed back and forth between Sierra Leone and Liberia, bringing ammunition with him to Sierra Leone. Even after being confronted with this evidence, Sesay maintained that Jungle was not a middleman between the RUF and the NPFL, insisting that Jungle was not bringing ammunition on Taylor's orders but "foodstuff" from the Lebanese.

j. Taylor's Alleged Plan to Kill Sesay

The Prosecution advanced the proposition that Taylor intended to eliminate Sesay because of his "unhappiness" over Sesay's decision to disarm the RUF. The Prosecution drew an assassination plot inference from the testimony of Joseph "ZigZag" Marzah, who previously told the Court that Taylor had asked him to wait in Kailahun and kill Sesay on his way to Liberia for a meeting with Taylor. The plan allegedly failed when Sesay decided not to return to Liberia after becoming aware that Taylor wanted him to agree to Bockarie's return to Sierra Leone (which Sesay supposedly feared because he thought Bockarie would kill him if Bockarie returned). Sesay told the Court that he did not know about the plan, nor did he believe that the allegations were true given Taylor's manifest support for the peace process.

Concluding his testimony, Sesay denied Prosecution claims that his testimony was motivated by a hope for release. According to the Prosecution, Sesay holds hope that if Taylor is acquitted, he would come back into power in Liberia, and would subsequently use his political capital to achieve Sesay's release from prison in Rwanda (where he is currently serving a fifty-two-year sentence). Sesay told the Court that he was fully cognizant of the fact that his appeal was final and Taylor's influence over his future nonexistent. He told the Court:

> Mr. Taylor is not a Sierra Leonean and has no influence or authority over the Government of Sierra Leone. He has no political authority in Sierra Leone. It's only the

[102] *Taylor*, Trial Transcript, August 25, 2010, pg. 84 (lines 22-26).

> people of Sierra Leone who can plead to the international community on my behalf, not Mr. Taylor. And the UN authorities who knew that I cooperated with them, that's the only hope that I have after God. Not Mr. Taylor.[103]

e. DCT-008

Following the conclusion of Issa Sesay's testimony, DCT-008 took the stand. DCT-008 is a Liberian national who served as a radio operator in Charles Taylor's Special Security Services (SSS) unit. He testified in Liberian English. This Witness, who claimed to have personal knowledge of communications between the SSS and the RUF, could undermine Prosecution allegations that Taylor commanded and assisted the RUF during the indictment period.

i. Radio Communication between Members of the SSS and the RUF

The Witness testified in detail about radio communication between Benjamin Yeaten's SSS radio station Base One and the rebels in Sierra Leone from late 1998 to 2003, when the Witness served as a radio operator at Base One. The Witness stressed that the communication was the initiative of Benjamin Yeaten and Sam Bockarie and that Taylor did not know about it. Because of this secrecy, according to the Witness, Base One did not cooperate with government radio. Moreover, the Witness testified, neither Base One nor the RUF used the radio in the RUF's Monrovia guesthouse (provided by the Liberian government) to communicate.

ii. Access to Taylor

The Witness also testified that the presidential residence was highly secured by the SSS and the Anti-Terrorist Unit (ATU). Moreover, the Witness stated that Yeaten's bodyguards, including Joseph "ZigZag" Marzah and Sampson Wehyee, or radio operators such as the Witness himself, would have had very little access to then-President Taylor. This line of questioning could impeach the evidence of Prosecution witnesses such as Marzah, who claimed to have had direct access to Taylor.

ii. Benjamin Yeaten Supporting the RUF

When asked about Yeaten allegedly supporting the RUF with ammunition and manpower on a regular basis in 1998 and 1999, the Witness responded that he only saw Yeaten selling ammunition to Bockarie once, in 1998. The Witness emphasized that he was told this deal was unknown to Taylor.

iii. Sam Bockarie's Departure from Sierra Leone and Death

The Witness testified about a confrontation between Sam Bockarie and Foday Sankoh that Base One operator "Sunlight" intercepted while monitoring the RUF radio network some time before Bockarie's move to Liberia in December 1999. According to the Witness, Sunlight told him that Sankoh accused Bockarie of incitement, and told Bockarie that he had ordered Issa Sesay to become the new commander of the RUF. The Witness testified that shortly thereafter, Bockarie entered Liberia with a convoy of RUF fighters and his family.

[103] *Taylor*, Trial Transcript, August 26, 2010, pg. 28 (lines 25-29); pg. 28 (lines 1-2).

Testifying about Bockarie's death, the Witness claimed that in 2003 he heard about Taylor supposedly ordering Bockarie's arrest as Bockarie was trying to enter Liberia with armed men. The Witness stated that he heard that Bockarie was killed as he resisted arrest. This testimony corroborates Taylor's explanation of Sam Bockarie's death.

iv. Cross-examination

The Prosecution conducted its cross-examination in a manner seemingly intended to provide doubt about the veracity of the Witness' claim to have personal knowledge about the secret communication between Benjamin Yeaten and Sam Bockarie. The Prosecution suggested at various times that the Witness had completely changed his story after May 12, 2010, when it became apparent to the Witness that the intended complete denial of all allegations would no longer be credible. The Witness vehemently denied these accusations and attributed the discrepancies to fear for his personal security.

a. <u>The Executive Mansion</u>

Referring to the highly secured executive mansion, the Prosecution asked the Witness how RUF member Daniel Tamba, a.k.a. Jungle, could have entered the executive mansion without proper ID, and made secret radio communications to the RUF without being seen by anyone loyal to the President. The Prosecution suggested he was able to do these things because Jungle was in fact a member of the SSS. The Witness disagreed, maintaining that Jungle was not SSS and likely entered the executive mansion under the protective wings of Sampson.

The Prosecution asked the Witness in detail about the layout of the executive mansion. Counsel for the Prosecution pointed out several inconsistencies between the Witness' answers and Taylor's description of several floors. The Prosecution also read parts of Taylor's testimony to the Witness in which Taylor told the Court that he had communicated with Bockarie by radio from White Flower. This statement contradicts the Witness' testimony, denying that the executive mansion had a radio room. The Witness explained that he had answered the questions to the best of his knowledge.

b. <u>Joining the NPFL and Child Soldiers</u>

According to the Witness, Nimbadians, including himself, joined the NPFL in order to protect themselves against Samuel Doe's government. In response, the Prosecution referred to the Witness' previous statements, in which he claimed to have joined the NPFL out of revenge. The Witness denied changing his story and suggested that the Defense could have failed to write all of his statements down. The Witness further stated that no one in the NPFL was under the age of seventeen, and refuted claims that Charles Taylor used Small Boys Units for protection.

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