U.C. Berkeley War Crimes Studies Center

Sierra Leone Trial Monitoring Program

Charles Taylor Monthly Trial Report (October 1, 2010 – November 30, 2010)

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1. Overview

The Taylor Defense team formally rested its case on November 12, 2010. The Trial Chamber will not sit again until closing arguments commence in February 2011. During this reporting period, the last Defense witness was called and the Chamber ruled on several Defense motions. The Chamber denied a Defense motion requesting an investigation of the Office of the Prosecutor on allegations of contempt of court, but granted the Defense leave to appeal. Also, after ordering the Prosecution to disclose exculpatory evidence concerning the alleged death of AFRC leader Johnny Paul Koroma, the Court denied a Defense motion to introduce that evidence into the record. Leave to appeal this decision was also granted. These and other legal issues are discussed below, along with a discussion of the testimony from the final witness to testify in the case against Charles Taylor.

The sole witness who testified during this reporting period was:

1. Samuel Flomo Kolleh (DCT-102)

This report summarizes witness testimony heard during November 2010 and identifies important issues that have arisen at trial. As with previous WCSC monitoring reports, it is available online at http://socrates.berkeley.edu/~warcrime/SL_Monitoring_Reports.htm. This is the final periodic trial report for the Taylor trial and for the Special Court for Sierra Leone Trial Monitoring Program. Following this report, the WCSC expects to publish one more thematic report on the *Taylor* trial and one final retrospective analysis of the Special Court's work from beginning to end.

2. Defense Themes and Strategies

This month, the Defense called its final witness and raised a few remaining legal issues with the Court. Witness DCT-102 testified about training with the RUF in Liberia prior to the RUF's first incursion into Sierra Leone. The Witness also testified about trading diamonds for weapons, but denied that Taylor was involved. Mr. Kolleh further told the Court that he was intimidated and bribed by the Prosecution during interviews in 2003. This testimony supported Defense contentions that the Prosecution should be investigated for contempt of court for improperly treating witnesses and potential witnesses. Although the Defense has formally rested its case, two outstanding appeals will be decided by the Appeals Chamber in early 2011. It is unclear how Appeals Chamber decisions on these motions may affect the Defense's final trial brief, which will be finalized in January 2011, or its closing oral arguments, to be heard in February 2011.

3. Prosecution Themes and Strategies

The Prosecution sought to impeach DCT-102's testimony by cross-examining him on prior inconsistent statements and inconsistencies between his testimony and the testimony of other Defense and Prosecution witnesses. The Prosecution frequently suggested that the Witness was a liar, and focused on the Witness' admission that he had lied about his name and address to the SCSL Prosecution and the Sierra Leonean Truth and Reconciliation Commission. Kolleh claimed that he had lied because he was afraid of being arrested by the SCSL. When asked about specific crimes committed by the RUF, Kolleh denied having witnessed such crimes, often saying that he either was in another location or otherwise had no knowledge of such crimes. For example, he admitted being in the area where the RUF's "Operation Stop Elections" was at its fiercest, and testified that he was a senior officer of the RUF at the time, but denied knowing about the amputation of limbs for which the operation was famous. Like the Defense, the Prosecution must also submit its final trial brief in January 2011, and will deliver oral arguments in February 2011.

4. Legal and Procedural Issues

This section addresses the legal issues that arose as the trial phase concluded for this case. The Trial Chamber ruled upon motions concerning an investigation into allegations of contempt of Court levied against the Prosecution; exculpatory information related to Defense witness DCT-032; evidence about Johnny Paul Koroma's death; and objections to entering documentary evidence into the record based on a lack of foundation.

Due to various personal circumstances, the Court often sat with three, instead of the usual four judges throughout the testimony of the final Defense witness, DCT-102. DCT-102 commenced his testimony on November 1, 2010 in the absence of Justice Lussick. On November 2, the Court called a recess because two of the Judges would be absent due to "unavoidable personal circumstances."[1] Justice Doherty was absent during the following three days of trial (November 3 – 5, 2010) and from November 8 – 9, 2010, Justice Lussick was presiding in the absence of Justice Sebutinde.

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

In September, the Defense requested an independent investigation into the Office of the Prosecutor and its investigators. The Defense alleged that the OTP had committed an abuse of process in its investigations, and had brought the administration of justice into disrepute. The Defense requested that the OTP be investigated for contempt of court under Rule 77 of the Rules of Procedure and Evidence.[2] The Defense argued that the alleged misconduct raised doubts about all of the Prosecution's evidence and impinged on Taylor's rights to a fair trial. The Prosecution objected to the motion, arguing 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 was an attempt to delay the proceedings. It also suggested that the allegations were based on statements from individuals and witnesses who lack credibility.

[1] Communication by the SCSL Press Office.
[2] Rules, Rule 77(A)(iv) and Rule 77(C)(iii).

i. Trial Chamber Decision

On October 22, 2010, the Trial Chamber issued an oral decision dismissing the motion in its entirety.[3] The Court subsequently published a written reasoned judgment on November 11, 2010. The written decision acknowledged that the standard of proof for determining whether to order an independent investigation is not that of a *prima facie* case, but a lower standard of a "reason to believe" an offense may have been committed.[4] However, the Court concluded that, in order to provide a "reason to believe" an offense had been committed, the allegation of contempt must be credible.[5] Furthermore, the Court noted that any alleged misconduct should be brought to the attention of the Court without undue delay.[6]

In spite of the Court's recitation of the standards for determining motions of contempt, the motion was denied on technical grounds. The Trial Chamber denied the motion on two grounds: first, that it was untimely, and second, that it did not fall within the ambit of Rule 77 of the RPE. The Trial Chamber noted that its finding on those two issues was sufficient to dispose of the motion. However, given the seriousness of the allegations, the Court considered that it was in the interests of justice to review the individual allegations of misconduct in the Defense motion on the merits.

Regarding the timeliness of the motion, the Chamber noted SCSL jurisprudence requiring parties to raise allegations of misconduct "without undue delay."[7] The Court noted that some Defense allegations involved incidents that occurred between two and eight years ago. The Defense had argued that although these incidents occurred several years ago, the injury to Taylor's fair trial rights resulted from the cumulative effect of ongoing OTP misconduct. The Trial Chamber found these arguments "erroneous and fundamentally flawed."[8] The Court reasoned that contempt of court is a criminal offense and thus an incident must constitute an offense at the time it is committed—not later, after other incidents have occurred. According to this rationale, the Defense should have brought each separate incident of misconduct to the attention of the Court within a reasonable time after it was committed. Because the incidents happened so long ago, the Court found that the Defense had failed to act with due diligence in bringing the allegations to the attention of the Court in a timely manner. The Court stated that it could have denied the motion for this reason alone.[9]

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[3] *Taylor*, Trial Transcript, 22 October 2010, pg. 3 (lines 11 – 12).

[4] *Taylor*, SCSL-03-01-1118, Decision on 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 Prosecutor and its Investigators, 11 November 2010 [hereinafter "Decision on Contempt"], para 19, citing *Taylor*, SCSL-03-01-600, Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008 [hereinafter "Appeals Chamber Contempt Decision"], paras 14 – 15.

[5] *Taylor*, SCSL-03-01-1118, Decision on 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 Prosecutor and its Investigators, 11 November 2010, para 20.

[6] *Taylor*, SCSL-03-01-600, Confidential Decision on Prosecution Motions for Investigation into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-457; SCSL-03-01-513) 19 September 2008, paras 14 – 15.

[7] Decision on Contempt, para 24, citing Appeals Chamber Contempt Decision paras 14 – 15.

[8] Decision on Contempt, para 25.

[9] *Id.* at para 26.

The Court went on to evaluate the motion in light of Rule 77, focusing on the broad nature of the motion. The Defense had requested an investigation into the conduct of former Prosecutors, and all employees of the OTP since the Court's inception, in relation to all witnesses, potential witnesses and sources for the Taylor trial. Moreover, the Defense wanted an investigation into the mandate of the OTP's Witness Management Unit (WMU) and payments made to witnesses and sources.[10] The Court reasoned that Rule 77 is only concerned with the alleged actions of individuals, not departments, and therefore the motion was insufficiently targeted and specific to warrant an investigation.[11]

After disposing of the motion on these two issues, the Court nevertheless turned to a discussion of the merits, given the serious nature of the allegations levied against the OTP. The Chamber evaluated the allegations in the Defense motion under Rule 77 of the RPE and the "reason to believe" standard. The Court found that allegations of misconduct were not based on credible sources, and therefore did not meet the relatively low "reason to believe" standard. The Trial Chamber found the following specific allegations insufficiently credible to warrant an investigation into contempt of court:

- DCT-192, a potential Defense witness, was slapped during an interview with OTP investigator Gilbert Morissette during interviews in 2002 in order to secure his cooperation and confession.[12]
- OTP, INTERPOL and the Sierra Leonean police would "sweep" the Kailahun district in 2003, arresting those would refused to cooperate with the OTP.[13]
- David Crane threatened DCT-102 with imprisonment and intimidated him during interviews with Crane and the OTP in 2003;[14]
- The Prosecution provided false intelligence to the Liberian police so that DCT-133 would be arrested and then forced to cooperate with the OTP;[15]
- The Prosecution lied to DCT-133, telling him his life was in danger by Taylor's associates and offering to protect him if he cooperated;[16]
- OTP investigators ransacked Taylor's Monrovia residence in 2004 and threatened DCT-086;[17]
- The Prosecution intimidated DCT-130 at a meeting in the German Embassy in Monrovia in 2006;[18]
- The Prosecution made unwarranted offers of relocation to witnesses as an "egregious" inducement to testify for the Prosecution;[19]
- The Prosecution offered improper inducements to DCT-130, including an offer to send him to America even though he had not requested relocation from Liberia or suggested that he was afraid to testify;[20]
- The Prosecution offered or provided money to witnesses, potential witnesses, or sources to obtain their testimony and assistance of amounts up to $250,000;[21]

[10] *Id.* at para 27.
[11] *Id.* at paras 27 – 31.
[12] *Id.* at para 45.
[13] *Id.* at para 50.
[14] *Id.* at para 56.
[15] *Id.* at para 72.
[16] *Id.* at para 78.
[17] *Id.* at para 89.
[18] *Id.* at para 98.
[19] *Id.* at paras 57, 60, 127.
[20] *Id.* at para 104.

- Payments made to prospective witnesses by WMU were irregular and went beyond the stated rationale or explanation provided for payments, such as the payments amounting to over $40,000 made to DCT-097 and many other payments made to various witnesses;[22]
- The Prosecution attempted to attract potential witnesses by alluding to benefits or inducements provided to others;[23]
- A Prosecution witness, TF1-139, called Defense witness DCT-086 from the United States and tried to get him to cooperate with the Prosecution by offering employment in Liberia;[24]
- The Prosecution released two of its witnesses, Foday Lansana and Isaac Mongor, from prison in exchange for their cooperation and testimony;[25] and
- The Prosecution offered improper inducements to DCT-261 to secure his cooperation.[26]

The Court also found that allegations of the impropriety of payments made to witnesses in the Taylor trial and the contention that the Prosecution had "poisoned" the well of potential witnesses did not fall under Rule 77. Instead, the Trial Chamber considered that it fell under Rule 39(ii) as an issue of discretionary payments, which the Judges will consider during final deliberations based on evidence adduced at trial.[27] The Court noted that the Prosecution had disclosed records of payments to the Defense. It further noted that the Defense had the opportunity to, and did, cross-examine witnesses about these payments. The Court stated that it would make a determination on whether these payments had influenced witnesses when it assessed their credibility and the veracity of their testimony during final deliberations.[28]

ii. Defense Motion for Reconsideration

The Defense moved for reconsideration of its motion by the Trial Chamber as well as permission to appeal. In the motion to reconsider, the Defense alleged that the decision was "fundamentally hostile to the fair trial rights of the Accused."[29] The Defense argued that the Court erred in reasoning, in particular by failing to "appreciate the inherent responsibility of the Court as the arbiter of justice to safeguard the Accused's rights" and by applying disparate and unfair legal standards.[30]

The Defense cited jurisprudence from the SCSL Appeals Chamber and the ICTY and ICTR confirming that the Trial Chamber would have discretion to reconsider a prior decision if "a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice."[31] The Defense also noted that in

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[21] *Id.* at para 83, 117, 134.
[22] *Id.* at para 110 – 112, 146.
[23] *Id.* at para 64, 121.
[24] *Id.* at para 92.
[25] *Id.* at para 141.
[26] *Id.* at para 145.
[27] *Id.* at para 40.
[28] *Id.* at para 148.
[29] *Taylor*, SCSL-03-01-1123, Defense Motion for Reconsideration of Decision on Defense Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 15 November 2010 [hereinafter Motion for Reconsideration], para 2.
[30] *Id.* at paras 3, 24 – 25.
[31] *Id.* at para 8, citing Prosecutor v. Ntagerura et al., ICTR-99-46-A, Appeals Judgment, 7 July 2006; Brima et al., SCSL-04-16-A, Appeals Judgment, 22 February 2008, para 63; Prosecutor v. Galic, IT-98-29-A, ICTY Appeals

reconsidering one of its decisions in the *Taylor* trial, Trial Chamber II noted that reconsideration was appropriate where "new material circumstances have arisen since the decision was issued."[32]

The motion complained that the Trial Chamber had focused too much on legal technicalities and not enough on issues of fundamental fairness to Taylor. In particular, the Defense took issue with the Chamber's finding of undue delay. The Defense argued that a delay of several years in raising these issues was understandable, given the identity of the victims of the alleged misconduct and the political and geographical context of Sierra Leone and Liberia, an issue the Court failed to consider.[33] Noting that the SCSL has jurisdiction over crimes committed over fourteen years ago, the Defense considered that the Court applied flawed rationale regarding the fact that the alleged acts took place years ago. It considered that the emphasis of the Court should have been on when the Defense learned of the Prosecution's conduct, not when the conduct took place. The motion also clarified the Defense's position that while each act it alleged could individually sustain a charge of contempt, it had focused on the modus operandi of the OTP as an organization and the totality of the circumstances, which together demonstrated a systemic and widespread corruption of the judicial process.[34]

The Defense also took issue with the Court's narrow reading of its own contempt powers, citing an ICTY Appeals Chamber decision confirming that in addition to the specific contempt power in the RPE, the Court had a general inherent power over allegations of contempt of court that was not restricted by specific Rules.[35] The Defense argued for a reading of Rule 77 that included organizations and other entities, not just individuals.[36] The Prosecution contested the motion to reconsider, arguing that the Defense had failed to establish a clear error of reasoning in the Trial Chamber's decision or that it was necessary to prevent injustice.[37]

The Trial Chamber has discretionary power to reconsider a prior decision when the decision is based on a clear error of reasoning, or where new material circumstances arise that make reconsideration necessary in order to prevent injustice.[38] The Chamber found that the Defense had not met the test for reconsideration and therefore dismissed the motion.[39]

Chamber, Decision on Defense's Request for Reconsideration, 16 July 2004, pg. 2; Prosecutor v. Mucic et al., IT-96-21Abis, ICTY Appeals Chamber, Judgment on Sentence Appeal, 8 April 2003, para 49.

[32] Motion to Reconsider, para 9, citing *Taylor*, SCSL-03-01-595, Decision on Public with Confidential Annexes B and E Urgent Prosecution Application for Reconsideration of Oral Decision Regarding Protective Measures for Witness TFI-215 or in the Alternative Application for Leave to Appeal Oral Decision Regarding Protective Measures for Witness TFI-2l5, dated 15 September 2008, pg. 4.

[33] Motion to Reconsider, para 14.

[34] *Id.* at para 16.

[35] *Id.* at para 19, citing Prosecutor v. Blaskic, IT-95-14, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, Appeals Chamber, 29 October 1997, para 59.

[36] Motion to Reconsider, para 22.

[37] *Taylor*, SCSL-03-01-1125, Prosecution Response to Public with Annex A Defense Motion for Reconsideration of Decision on Defense Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 19 November 2010, paras 1, 12.

[38] *Taylor*, SCSL-03-01-1132, Decision on Public with Annex A Defense Motion for Reconsideration of Decision on Defense Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 3.

[39] *Id.* at 4.

iii. Defense Motion for Leave to Appeal

In order to be granted leave to appeal a decision of the Trial Chamber, a party must meet the conjunctive test of "exceptional circumstances" and "irreparable prejudice" necessary under Rule 73(B).[40] In its motion for leave to appeal the decision on an investigation into contempt, the Defense raised essentially the same arguments as in its motion to reconsider, described above. It argued that in evaluating the credibility of the Defense allegations and affidavits, the Chamber had applied a standard stricter than the "reason to believe" threshold for Rule 77.[41] In particular, the Defense suggested that when assessing a witness' credibility or prejudice to the Defense, the Trial Chamber had added an additional requirement that there must be a link between the alleged act of contempt and a witness' unwillingness to testify.[42] Suggesting that the decision comprised a "summary trial" inappropriately evaluating the truthfulness of the allegations, the Defense took issue with the Chamber's reliance on evidence that was not put forth by either party. It argued that this was a double standard and demonstrated bias towards the Prosecution.[43] The motion to appeal also argued that the Chamber erred in treating Rules 39(ii) and 77 as mutually exclusive, arguing that an abuse of discretion under Rule 39 could constitute contempt of court under Rule 77.

The Defense argued that these purported errors of law and fact constituted exceptional circumstances and caused the Defense irreparable prejudice. The motion argued that challenges to the integrity of the OTP "undermine the integrity and lawfulness of the entire judicial process."[44] Noting that this issue raised novel and fundamental questions of law and fact, the Defense posited that an independent investigation was the only way to dispose fully of the question of the Prosecution's alleged misconduct. Not only would the issue be impossible to remedy on final appeal or through re-trial, the Defense argued, but the full impact and implications of the conduct could not be adequately dealt with during final deliberations.[45] Acknowledging that some potential witnesses had exploited or taken advantage of the benefits from the Prosecution to give false evidence, the Defense noted that this was what laid at the root of its argument: that the Prosecution's investigative strategy, including purported threats, bribes, intimidation and inducements, had "ultimately deprived the Defense of untainted witnesses."[46] An investigation, it contended, was the only way to evaluate the full extent of the prejudice this had caused.[47]

In a response, the Prosecution argued that the Defense had failed to establish exceptional circumstances.[48] The Prosecution averred that in the context of a decision on contempt, the purported

[40] Rules, Rule 73(B).
[41] *Taylor*, SCSL-02-01-1121, Defense Motion Seeking Leave to Appeal the Decision on the Defense Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 15 November 2010, para 9(a).
[42] *Id.* at para 9(b).
[43] *Id.* at para 9(d).
[44] *Id.* at para 12.
[45] *Id.* at paras 15, 17.
[46] *Id.* at para 17.
[47] *Id.*
[48] *Taylor*, SCSL-03-01-1126, Public with Confidential Annexes 2 & 3 Prosecution Response to Public Defense Motion Seeking Leave to Appeal Decision on the Defense Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 23 November 2010 [hereinafter "Prosecution Response to Motion to Appeal"], paras 4 – 6.

errors of law and fact did not constitute exceptional circumstances.[49] Moreover, the Prosecution contended, the Defense had disingenuously argued that there were novel and fundamental questions of law at issue.[50] The Defense arguments had extended the scope of the issue to concern an investigation of the entire OTP, not individual members of the OTP, which the Prosecution maintained was at issue in the original motion.[51] The Prosecution also argued that the Defense had not established irreparable prejudice. According to the Prosecution, the suggestion that the Defense had been deprived of untainted witnesses was misleading, since the witnesses themselves had changed their stories and the Defense could have called those witnesses to testify.[52] Indeed, the Prosecution suggested, the Defense motion was merely a ploy to bring superfluous information before the Trial Chamber and evade cross-examination and judicial questioning of that information.[53] Additionally, the response argued, the Defense had not addressed why the issue was not remediable in an appeal of the final judgment.[54]

The Trial Chamber granted the motion for leave to appeal. The Chamber considered that the motion raised issues of fundamental legal importance relating to the interpretation of Rule 77. In particular, the Chamber found, the motion raised important issues about whether the Rule extends to "general complaints regarding the operation of the Office of the Prosecutor and its staff, including payments or benefits made to witnesses, potential witnesses and sources."[55] The Trial Chamber also considered that the Defense allegations of contempt have serious implications on the OTP that could potentially violate the fair trial rights of the Accused.[56]

b. Motion for Exculpatory Information Related to DCT-032

The Defense also requested the Court to order the Prosecution to disclose exculpatory information related to DCT-032 under Rule 68(B).[57] The Prosecution has alleged that Taylor systematically murdered persons from his inner circle who knew about the crimes he committed so that they could not testify against him in his trial. This, the Prosecution has maintained, demonstrates Taylor's awareness that he is responsible for the crimes in the indictment.[58] The Prosecution claims that Johnny Paul Koroma was one of those murdered by Taylor, and has led evidence from a number of witnesses that DCT-032, a supposed associate of Taylor, killed Koroma in 2003.[59]

[49] *Id.* at paras 4 – 6.
[50] *Id.* at paras 4 – 6.
[51] *Id.* at paras 4 – 6.
[52] *Id.* at para 12.
[53] *Id.* at para 10.
[54] *Id.* at para 15.
[55] *Taylor*, SCSL-03-01-1130, Decision on Defense Motion Seeking Leave to Appeal the Decision on the Defense Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 3 December 2010, pg. 5.
[56] *Id.* at pg. 5.
[57] *Taylor*, SCSL-03-01-1088, Public with Confidential Annexes A-D Defense Motion for Disclosure of Exculpatory Information Relating to DCT-032, 24 September 2010 [hereinafter "Defense Motion on DCT-032").
[58] *Taylor*, Trial Transcript, 4 June 2007, pg. 276 – 280 (opening statement of the Prosecutor).
[59] Decision on Defense Motion on DCT-032, para 1.

According to the Defense motion, the Prosecution interviewed DCT-032 in 2008 and attempted to exhume the body of Koroma in two locations where DCT-032 said Koroma could be buried.[60] The Defense suggested that at least one of the DNA tests conducted by the Prosecution was negative.[61] Indeed, the Defense argued that according to DCT-032, Koroma may not be dead. The Defense also argued that the Prosecution made payments of up to $1500 to DCT-032 and indemnified him from prosecution so that he would provide false evidence against Taylor. As a result, the Defense argued that the results of the DNA test and the Prosecution's payments to DCT-032 should be disclosed because they go against the allegation that Taylor was involved in Koroma's death.[62] The Defense also requested the Court to require the Prosecution to provide an explanation as to why this information was not disclosed previously and to draw adverse inferences against the Prosecution for its lack of disclosure.[63]

The Prosecution opposed the motion, arguing that the information was not exculpatory and that it had met its disclosure obligations. Moreover, the Prosecution contended that it is not required to operate an "open files policy."[64] The Prosecution maintained that the Defense had not made a *prima facie* showing of the exculpatory nature of the information, a requirement for such requests.[65] In particular, the Prosecution argued that it had not led evidence on where Koroma was buried, and therefore the fact that he was not buried where DCT-032 indicated did not contradict Prosecution evidence.[66] Regarding the indemnification and payments, the Prosecution maintained that because DCT-032 was merely a source—not a witness or potential witness—it had no obligation to release this information about him.[67]

The Court granted the motion in part. It found that DCT-032 qualified as a potential witness rather than a mere source because several Prosecution witnesses had implicated DCT-032 in Koroma's death, and DCT-032 had provided the Prosecution with substantial information relating to his role in the conflict and other aspects relating to the role of Taylor's subordinates in Koroma's death. The Chamber further considered that payments to DCT-032 were not made to pay him as a source but were given to him as a potential witness "for his own benefit."[68] It based this conclusion on the fact that the Prosecution had not contested Defense allegations that the payments were for DCT-032's cooperation and because payments were promised for after the Prosecution could confirm that the body was Koroma's. The Court also considered that the indemnification letter supported the inference that the Prosecution wanted to ensure his cooperation and possible testimony.[69] The Court ordered the Prosecution to disclose the information sought by the Defense, as it may affect the credibility of the Prosecution's evidence and was potentially exculpatory in nature.[70] However, the Court denied the Defense request for an explanation from the Prosecution as to why it had not previously disclosed the information. The

[60] Decision on Defense Motion on DCT-032, para 6, citing Defense Motion on DCT-032, Confidential Annexes A and C.
[61] *Id.*
[62] Defense Motion on DCT-032, paras 8 – 12.
[63] *Id.* at paras 2, 23 – 26.
[64] *Taylor*, SCSL-03-01-1096, Prosecution Response to 'Public with Confidential Annexes A-D Defense Motion for Disclosure of Exculpatory Information Relating to DCT-032, 1 October 2010, [hereinafter "Prosecution Response on DCT-032"], paras 3, 14.
[65] Decision on Defense Motion on DCT-032, para 20.
[66] Prosecution Response on DCT-032, paras 4 – 5.
[67] *Id.* at paras 6 – 12.
[68] Decision on Defense Motion on DCT-032, para 26.
[69] *Id.*
[70] *Id.* at para 28 – 32.

Court found that the Prosecution had explained the issue through the declaration that the Prosecution considered DCT-032 a source. The Court also found it premature to consider drawing adverse conclusions from the Prosecution's non-disclosure.[71]

c. Motion for Introduction of Evidence related to Johnny Paul Koroma's Death and Appeal

Pursuing the issue of Koroma's death, the Defense sought to enter certain disclosed materials related to Koroma's alleged murder into evidence under Rule 92*bis*. This included:

- An affidavit from witness DCT-032
- Results of the Prosecution investigation into the alleged death of Johnny Paul Koroma
- Records of the disbursements made to witness DCT-032
- A copy of an indemnity letter from the OTP to DCT-032

The Defense further requested that the Chamber draw an adverse inference against Prosecution allegations that Taylor was responsible for Koroma's death, because the Prosecution had failed to disclose the information under Rule 68.[72] The motion argued that, although material that tends to prove the acts and conduct of the accused is normally prohibited from being introduced under Rule 92*bis* in order to protect the fair trial rights of the accused, this prohibition should not apply when the Accused is the one submitting the material. The Defense distinguished the instant case from other Rule 92*bis* submissions on the grounds that Taylor was tendering exculpatory evidence that did not tend to prove any of his acts or conduct relied on by the Prosecution on to establish his guilt.[73] Therefore, the Defense contended, the evidence should be allowed.[74] The motion further suggested that the Defense request for an adverse inference relating to the Prosecution evidence and the credibility of the Prosecution witnesses was a proper remedy for the Prosecution's violation of disclosure rules, given that the Defense would not be able to cross-examine the witnesses at this late stage of the trial.[75]

The Prosecution opposed the motion, arguing that the Defense had not satisfied the test for admission of documents under Rule 92*bis*[76] and that the remedy requested for the disclosure was unwarranted.[77] The Prosecution argued that the evidence was irrelevant, and that its reliability could not be confirmed.[78] The Prosecution maintained that there was no basis for the Defense's distinction of the treatment of evidence going to the acts and conduct of the Accused under Rule 92*bis*. The Prosecution further argued that the rule and related jurisprudence extends to both incriminatory and exculpatory

[71] *Id.* at para 33.
[72] *Taylor*, SCSL-03-01-1108, Public with Confidential Annexes A-D Defense Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 27 October 2010 [hereinafter "Defense Motion on Death of Koroma"], paras 5, 28.
[73] *Id.* at paras 9 – 11.
[74] *Id.* at para 23.
[75] *Id.* at paras 26 – 27.
[76] *Taylor*, SCSL-03-01-1112, Confidential Prosecution Response to Public with Confidential Annexes A-D Defense Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 2 November 20 10 [hereinafter "Prosecution Response on Death of Koroma"]; para 4.
[77] *Id.* at paras 14, 20 – 22.
[78] *Id.* at paras 5 – 8.

evidence.[79] Opposing the proposed adverse inference, the Prosecution maintained that the Defense had not suffered any prejudice and that drawing such inferences is a severe remedy that should be apply only in exceptional circumstances.[80]

In a 2-1 Decision, with Justice Sebutinde dissenting, the Trial Chamber dismissed the motion in its entirety. The Chamber held that there was no basis for the Defense position that exculpatory evidence introduced by the Accused should be treated differently under Rule 92*bis*.[81] The Chamber found that the documents in question variously included a) evidence that tended to prove the acts and conduct of Taylor, b) opinion evidence, or c) evidence that was not relevant.[82] Thus, the Chamber concluded, the documents were not allowed under Rule 92*bis*.[83] The Chamber declined to draw an adverse inference against Prosecution allegations and evidence that Taylor was responsible for Koroma's death. The Chamber found that the Defense had not demonstrated material prejudice from the late disclosure, that the Prosecution's failure was not one of bad faith and that the materials relied upon by the Defense did not establish that the Prosecution's evidence about Koroma's death could not be believed.[84]

i. Motion for Leave to appeal

In a motion seeking leave to appeal the Trial Chamber's decision[85], the Defense sought permission to appeal alleged errors of law and fact in the Chamber's refusal to admit the affidavit from DCT-032.[86] The Defense averred that the Trial Chamber majority erred in reasoning when it found that the exculpatory evidence proffered by the Defense was inadmissible under Rule 92*bis*, because it includes evidence of the acts and conduct of Taylor.[87] According to the Defense, this erroneous reasoning meets the conjunctive test of "exceptional circumstances" and "irreparable prejudice" necessary under Rule 73(B) for leave to appeal.[88] The Defense submitted that exceptional circumstances existed because, due to the Prosecution's tangibly late disclosure of the material, the Trial Chamber erroneously excluded the material from evidence, which may interfere with the interests of justice.[89] In addition, the Defense contended that the question of what constitutes "acts and conduct" of the Accused and how an "omission" should be interpreted under Rule 92*bis,* especially in relation to exculpatory evidence, raised

[79] *Id.* at paras 9 – 10; citing *Taylor*, SCSL-03-01-1099, Decision on Public with Annex A Defense Motion for Admission of Documents Pursuant to Rule 92*bis* - Newspaper Articles, 5 October 2010, p. 4, Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-16-1125, Decision on Sesay Defense Motion and Three Sesay Defense Applications to Admit 23 Statements under Rule 92*bis*, 15 May 2008; Prosecutor v. Nsabimana et al., ICTR-97-29-T, Decision on Nsabimana's Motion to Admit the Written Statement of Witness Jami in lieu of Oral Testimony Pursuant to Rule *92bis*, 15 September 2006.
[80] Prosecution Response on Death of Koroma, paras 20 – 22.
[81] *Taylor*, SCSL-03-01-119, Decision on Public with Confidential Annexes A-D Defense Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 11 November 2010, para 21.
[82] *Id.* at paras 25, 30, 31.
[83] *Id.* at paras 25, 30, 31.
[84] *Id.* at para 35.
[85] *Taylor*, SCSL-03-1-T-1122, Defense motion seeking leave to appeal the decision on the Defense motion for admission of documents and drawing of an adverse inference relating to the alleged death of Johnny Paul Koroma, 15 November 2010.
[86] *Id.* at para 3.
[87] *Id.* at paras 3,8, 9.
[88] *Id.* at paras 3, 9.
[89] *Id.* at paras 11.

an issue of fundamental legal importance requiring further deliberation.[90] Regarding irreparable prejudice, the Defense maintained that the exclusion of the exculpatory material precluded the Defense from relying on the material in its final brief, and denied the Judges the ability to consider it in its Judgment, consequences not easily remedied on final appeal.[91] Moreover, the Defense complained, it barred the Judges from considering any Defense request for adverse inference for the late disclosure.[92]

In response,[93] the Prosecution submitted that the Defense's motion failed to prove either of the cumulative conditions required under Rule 73(B).[94] Regarding the exceptional circumstances, the Prosecution argued that the allegedly exculpatory evidence could not in itself constitute "exceptional circumstances," as all Defense evidence is presumably exculpatory.[95] In addition, the Prosecution contended, the impugned decision did not address issues of applicability of Rule 92*bis* on omissions to act, thereby excluding grounds for such an argument.[96] According to the plain language of the rule and related case law, Rule 92*bis* applies equally to submissions by all parties to a case that relate to the acts and conduct of the Accused. The Prosecution explained that the Trial Chamber had previously held that the prohibition applies to submissions of both parties to prove or disapprove the Accused's acts or conduct.[97] The Prosecution further submitted that the possibility of remedy upon final appeal precluded causing irreparable prejudice to the Defense's case.[98]

The Trial Chamber granted the motion, thereby allowing the Defense to appeal the impugned decision. The Bench considered that the motion raised the issue of interpretation of Rule 92*bis*, in particular whether exculpatory evidence tendered by the Defense going to proof of the acts and conduct of the Accused is inadmissible under Rule 92*bis.* The Court considered this an issue of fundamental legal importance warranting further deliberation by the Appeals Chamber.[99] Furthermore, the Court considered that the Accused could suffer irreparable prejudice from an incorrect interpretation of Rule 92*bis*, as it considered this not to be easily remediable on final appeal.[100]

d. Foundation for Documentary Evidence

The most important legal issue that arose during this reporting period dealt with the issue of laying foundation for documentary evidence presented through a witness. At the SCSL, simple relevance is the

[90] *Id.* at para 12.
[91] *Id.* at para 14.
[92] *Id.*
[93] *Taylor*, SCSL-03-1-1124, Prosecution Response to 'Public with [sic] Defense motion seeking leave to appeal the decision on the Defense motion for admission of documents and drawing of an adverse inference relating to the alleged death of Johnny Paul Koroma, 19 November 2010.
[94] *Id.* at paras 2, 17.
[95] *Id.* at para 5.
[96] *Id.* at para 6.
[97] *Id.* at para 7-8.
[98] *Id.* at para 11-16.
[99] *Taylor*, SCSL-03-01-1131, Decision on Defense motion seeking leave to appeal the decision on the Defense motion for admission of documents and drawing of an adverse inference relating to the alleged death of Johnny Paul Koroma, 3 December 2010, pg. 6.
[100] *Id.*

test for admitting evidence at trial.[101]According to the SCSL Appeals Chamber, in order to submit documents into evidence through a witness, the tendering party must first establish the witness' competence to give evidence about the document.[102] Personal knowledge establishes the necessary link or connection to the document and lays the foundation to submit it into evidence.[103] Without this connection, the Appeals Chamber ruled, one can only give opinion-based evidence.[104] Thus, it is imperative that the tendering party lay sufficient foundation to enable the Trial Chamber to conclude that the documentary evidence is *prima facie* relevant.

i. Objection to MFI-7G(1)

The issue arose when the Defense objected to the introduction of a photograph downloaded from a website, washingtonpost.com, supposedly showing Sam Bockarie (alias "Mosquito") in a tailor-made suit and a boy standing next to him wearing a camouflage uniform. Above the picture was the caption "Dressed in a double-breasted suit, Mosquito admits he is a 'big showman.'" [105] During cross-examination, the Prosecution had first put the photograph to the Witness without the caption. When asked whether he recognized anyone in the photo, the Witness stated he only knew the boy in camouflage to be Johnny, Sam Bockarie's bodyguard, but could not identify the man in the suit. When the Prosecution suggested this was Sam Bockarie, the Witness said he could not tell. The Prosecution then showed the Witness the same photograph only this time with the caption. The Witness still denied recognizing Bockarie in the picture. Basing its arguments on the above-mentioned Appeals Chamber decision, the Defense objected to introduction of the second photograph (with the caption). The Defense argued that the Prosecution was seeking to introduce a caption stating that the person in the photo was, in fact, Mosquito, when the Witness had denied that he had a basis to judge whether or not it was Mosquito.

The Prosecution argued that the question central to admitting documents into evidence is whether the witness is capable of giving relevant evidence. According to the Prosecution, as the credibility of this particular witness was very much at issue, it was relevant that the Witness claimed he could not identify his close associate Sam Bockarie, but that he was able to recognize Bockarie's bodyguard. The Prosecution further stated that although the caption was hearsay, hearsay is allowed under Rule 89 to go to the weight the Judges afford to the evidence.

The Judges overruled the objection. According to the Bench, as the Witness was able to recognize Sam Bockarie's bodyguard Johnny, the Prosecution successfully established the Witness could give evidence on the photo. The Judges agreed with the Prosecution that the caption was pure hearsay and that it was up to the Court to give weight to it, if any.

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[101] Rules, Rule 89(c); see also Prosecutor v. Norman et al., SCSL-04-14-AR65, Fofana – Appeal Against Decision Refusing Bail, 11 March 2005 (Appeals Chamber), paras 24, 26.
[102] Prosecutor against Charles Ghankay *Taylor*, Appeals Chamber II, Decision on "Prosecution notice of appeal and submissions concerning the decision regarding the tender of documents," 6 February 2009, paras 40-41.
[103] *Id.* at para 41.
[104] *Id.*
[105] *Taylor*, Trial Transcript, 8 November 2010, pg. 4 (lines 4-5).

ii. Objection to MFI-12A, B, and C

The Defense also objected to a satellite image of open terrain, supposedly portraying Rokel creek. Using the same line of argument as in the previous objection, the Defense stated there was no foundation because the Witness was not able to identify any element of the image put to him. Furthermore, the Defense argued that the image, apparently of some sort of creek, dated from 2010 and had no indication that it was related to how the terrain in this region was during the war. It was impossible, the Defense argued, to tell anything about topography of the area from the image.

In response, the Prosecution first pointed out that it is common practice to investigate terrain, even long after battles, to understand what happened during war. According to the Prosecution, there was sufficient foundation to the document, as the Witness agreed with the Prosecution's proposition that the RUF would not choose open terrain to store weapons. Because ECOMOG had the advantage of air jets, open terrain would have left RUF artillery vulnerable to easy destruction. The Prosecution argued that any potential changes in the terrain since the war would be an issue going to the weight of the evidence, but should not preclude its admission.

The Judges sustained the Defense objection, ruling that the satellite image was impermissible because the Witness was unable to identify the terrain in the photographs and could not give any relevant evidence to the document.

iii. Objection to MFI-13

The Defense sought to exclude from evidence a two-page document authored by the Association for the legal Defense of Charles G. Taylor. The Defense argued that the Prosecution had not laid sufficient foundation for the document, because the Witness was unaware of the document, as well as the association, and ignorant of the document's contents. The Prosecution responded that the document was relevant to the Prosecution's case. According to the Prosecution, one of the Association's roles was to recruit Defense witnesses, such as John Vincent. DCT-102 denied allegations of the connection, but Prosecutors maintained that the DCT-102 had referred Vincent to the Defense through the Association.

The Judges granted the Defense's motion to exclude the document on the same grounds as they had for MFI-12A, B and C. As the Court had stated before, the Witness' lack of knowledge about the document or the Association rendered him incompetent to give evidence about the document.

iv. Objection to MFI-17

The Defense objected to an article about a man named Don Ray's experience as a civilian police officer for the United Nations in Kailahun. According to the Defense, the Witness had only spoken about Don Ray in relation to Ray's visiting card, which was handed to the Witness by David Crane. The Defense argued that the document should be excluded, as the article said nothing about Ray's visiting cards or about who handed them out.

The Prosecution argued that the document was relevant to the Prosecution's allegation, contrary to the Witness' claims, that in fact no one from the Office of the Prosecutor gave the Witness this card. The Prosecution argued that the article helped illustrate how easily the Witness could have obtained this

visiting card. The article states Don Ray was a civilian police officer in Kailahun, which is where the Witness claimed he was living up to 2005.

As with previous similar motions, the Judges sustained the Defense objection on grounds that the Witness was not able to identify any person in the article or anything in the article.

5. Witness Testimony

Witness DCT-102, Sam Flomo Kolleh, alias Sam Mustafa Koroma, is a Liberian. He was born on September 9, 1972 in Monrovia. The Witness studied at the University of Liberia until the beginning of the Liberian war.

a. Introduction into the RUF

The Defense began direct examination by asking Kolleh about how he became part of the RUF. The Witness testified that he was captured by an NPFL fighter named Arthur in late 1990. Kolleh claimed that after spending about two months with him, Arthur sent the Witness to a section of Camp Naama called Crab Hole. Kolleh trained at Crab Hole with the RUF for six months. Kolleh acknowledged that there was interaction between Liberians and Sierra Leoneans present at the camp, but stated they were all there for training. Kolleh told the Court about the physical exercise, ideological training and lectures the fighters received at Camp Naama. According to the Witness, the ideological training included classes on the rules governing warfare. Kolleh denied that the ideology of the RUF involved terrorizing the civilian population.

The Witness testified that the recruits were forced to leave Camp Naama after NPFL generals heard about Sankoh training his fighters at the site. According to the Witness, they entered Sierra Leone on April 3, 1991. The Witness stated that his group comprised 183 men, both Sierra Leoneans and Liberians. However, he testified that after some problems within the group, the Liberians were forced to leave. Defense Counsel pointed out that the Witness is Liberian, and asked him to clarify why he was not sent away. The Witness then explained that the only Liberians allowed to stay within the RUF were those, like himself, who were directly trained by Sankoh.

Throughout direct examination, the Defense asked Kolleh about his positions within the RUF. The Witness denied that he was a top commander of the RUF. According to Kolleh, because he was an RUF vanguard, he was automatically given a nominal position as senior officer, which was his highest position within the RUF.[106] Kolleh claimed he was Sam Bockarie's senior bodyguard.

b. Diamonds within the RUF

According to Kolleh, Sankoh sent him to Issa Sesay with diamonds on three occasions between 1994 and 1995. The Witness explained that, on these occasions, he and Sesay would meet three RUF external delegates for the Ivory Coast at the Liberian/Guinean border, who had come to Sierra Leone to trade diamonds. The Witness fiercely denied transporting diamonds to Liberia, and claimed he was not aware of any exchange of diamonds between the RUF and Taylor.

[106] *Taylor*, SCSL-03-01-998, Trial transcript, November 3, 2010, pg. 48655 (lines 7-8)

c. The RUF disarmament

Kolleh testified that, during the disarmament process, he was in charge of transporting weapons to the peacekeepers. The Witness strongly denied carrying arms into Liberia during the disarmament, explaining that he had no reason to do so, because they received money in return for weapons, and because he would have been reported if other RUF found out about him taking arms to Liberia.

d. The RUF trading diamonds for weapons and ammunition in 1996

The Defense asked Kolleh how the RUF obtained ammunition in late 1996. The Witness responded that Sankoh had ordered Sam Bockarie to travel to Liberia to obtain weapons and ammunition from the United Liberation Movement of Liberia for Democracy (ULIMO). Bockarie's visit resulted in an agreement with ULIMO, after which a large quantity of weapons and ammunition of various types was brought into Sierra Leone late at night, Kolleh said. According to Kolleh, he was in charge of the transport during this operation. Kolleh claimed Sam Bockarie purchased the weapons with dollars, diamonds and jewelry, but stated he never actually saw the transaction. The Witness testified that after this operation, some individual ULIMO fighters brought their own weapons to sell.

e. Freetown attack May 1997

The Witness claimed he was in Yemen when he heard over the radio about the AFRC's 1997 Freetown attack. According to the Witness, Sankoh, who was imprisoned in Nigeria, had ordered Bockarie to go to Freetown. Kolleh acknowledged that the RUF joined the AFRC after the coup, but stated that besides Bockarie, who was assigned deputy chairman of the AFRC until Sankoh's return, no RUF officer was given a special position within the Junta government. When asked about his own position at that time, the Witness stated that he was an RUF officer.

f. Mining activities in Sierra Leone

The Defense questioned the Witness about mining activities in Sierra Leone at the time the Junta came to power in May 1997. The Witness testified that the RUF was engaged in mining in Kono, Kenema and Tongo at that time. When asked whether the RUF also mined in those places before the AFRC coup, the Witness answered in the negative. The Witness also stated that the Junta stopped mining at the end of 1997, but that other groups, such as civilians from the area, continued mining.

g. Freetown attack in 1999

When asked about the Freetown attack of January 1999, Kolleh stated that no RUF forces entered Freetown the day of the attack. The Witness claimed that the RUF only reached Benguema, Waterloo, because Bockarie ordered his forces to stop their approach to Freetown. Kolleh testified that RUF signalers King Perry and Alfred Brown reported from Freetown over the RUF radio to Rambo, Sesay and Bockarie. According to Kolleh, the two men were in Freetown already because Rambo had previously ordered them to move ahead. Kolleh said it was from that radio report that he heard that SAJ Musa, who died later that day, had attacked Freetown with his large group of SLA fighters, and had declared the RUF his enemy. King Perry also reported that twenty to twenty-five RUF fighters had accompanied SAJ Musa's group, but were forced to flee when Musa declared the RUF his enemy. According to Kolleh, King Perry reported that he was severely beaten by SLA soldiers for giving updates to the RUF about SAJ

Musa's movement. Kolleh testified that he also heard an interview between Robin White and Gullit over the BBC radio, reporting that the SLA had captured Freetown and that they were not fighting under Bockarie, but under a separate command. When asked why Sam Bockarie had told the BBC that the RUF had taken full control over Freetown, the Witness responded that he did not know why, but that it was a "coincidence", which might have had to do with Bockarie's "flamboyant" personality. [107]

h. Bockarie leaving the RUF

The Witness also testified about Sam Bockarie leaving the RUF on December 16, 1999 and going to live in Liberia. Kolleh said that the UN had negotiated Bockarie's move to Liberia in order to protect the peace process. When asked how he knew about this, Kolleh stated that UN personnel visiting Buedu told him.

i. RUF attack on Guinea in 2000

The Defense asked the Witness whether he could remember any RUF activities at the Guinean border with Sierra Leone. The Witness responded that he had seen Matthew Barbue, a senior RUF officer, and Superman heading for the border as the RUF suspected an invasion from Guinea early 2000. The Witness claimed he was later ordered to move with Barbue to the border, but denied ever crossing into Guinea.

j. Interviews with the SCSL and the TRC

Kolleh gave evidence about the two interviews he granted the Special Court's Prosecution Office. According to the Witness, Chris Bomford, a national investigator of the Special Court, visited him at his house in Kailahun in 2003. Although Kolleh denied any wrongdoing, he acknowledged giving a false name—Sam Mustafa Koroma—to the investigator at that time, as well as offering false statements about his participation in the war, because he feared arrest by the Special Court. According to the Witness, the Special Court had already arrested many RUF Vanguards. Kolleh stressed that besides that meeting, the rest of his testimony was truthful. According to Kolleh, the OTP investigator knew about this false identity. Kolleh testified that Bomford told him at that time that he was only interested in conducting an interview about diamond trades to Liberia.

According to the Witness, the following day he was taken to Freetown and interviewed in the Special Court's premises. Kolleh claimed he became emotionally disturbed as he overheard walky-talky communication in which a voice ordered, "Bring the perpetrator in." Kolleh testified that he was escorted to a room with six people, including David Crane. According to the Witness, Crane introduced himself and then handed him a card with the name "Don Ray" on it, showing a police officer holding a prison cell door. On the back side of the card there was a message for children: "If you choose not to listen to your parents, you will have no choice but to listen to me." Kolleh said he understood that to mean that he had to cooperate or otherwise he would be imprisoned. The Witness testified under direct examination that he also lied to David Crane about his personal details, and about how he joined the RUF. The Witness confirmed that he was asked about many things during that interview, but stressed that the Prosecution investigators mainly focused on diamonds. Kolleh claimed, however, that he never told them about taking diamonds to Taylor. Confirming statements from a transcript of the interview,

[107] *Taylor*, Trial transcript, November 1, 2010, pg. 6 (lines 1, 14-15).

Kolleh said he was asked about Sam Bockarie approaching ULIMO for arms and ammunition and about the RUF transporting weapons to Freetown following the AFRC's request for the RUF to join the government in 1997. According to Kolleh, he discussed SAJ Musa's invasion of Freetown, and about how Bockarie never reached Freetown on January 6, 1999. Kolleh confirmed that he had told the Prosecution interviewer that he knew Bockarie never reached Freetown, because he, like everyone else, was listening to the radio that day.

Kolleh testified that after this second interview investigator Bomford attempted to bribe him by offering $90,000 if he would testify that he brought diamonds to Charles Taylor. The Defense then asked the Witness about his interview with the TRC of Sierra Leone. Kolleh acknowledged he also gave them a same false name, Sam Mustafa Koroma, and false testimony about his role in the Sierra Leonean civil war. He again explained the lies by noting that he had feared arrest.

k. Discrediting Prosecution Witnesses

Consistent with the Defense strategy throughout the trial, the Defense tried to discredit a number of Prosecution witnesses during Kolleh's testimony. The Defense first read TF1-516's testimony to the Witness. TF1-516 had claimed that Kolleh went into Guinea when he was on an operation with Matthew Barbue. Kolleh flatly denied this allegation, insisting that he never crossed the border into Guinea. Kolleh also disputed TF1-516's testimony, claiming that Kolleh had transported weapons from the RUF into Liberia during the disarmament process.

According to another witness, TF1-571, Sam Kolleh once attended a meeting late at night with various high-ranking RUF members, such as Bockarie and Sesay. The Witness denied this. However, Kolleh acknowledged he once attended a mass meeting of RUF frontline commanders and senior officers during the day. This meeting was held near Waterworks in July or August 1998, following Bockarie's return from Burkina Faso for peace talks. According to the Witness, Kono was attacked after the meeting. The Defense showed the Witness a picture supposedly taken at an RUF meeting held in Buedu Town in 1999, during the ceasefire. Kolleh identified Foday Sankoh, who had just been released from the Nigerian prison, Sam Bockarie and two Nigerian Peacekeepers in the picture. Kolleh acknowledged being present at this meeting, and standing somewhere in the crowd. However, Kolleh disputed TF1-367's testimony identifying one of the Nigerian peacekeepers in the photo as him. Kolleh strongly denied that he appeared in the photograph, and denied ever having dressed up as a Nigerian peacekeeper.

Finally, the Defense questioned the Witness about TF1-337's testimony placing "Siem Kolleh" and another RUF Vanguard at a muster parade in Magburaka Town with a truck full of weapons. According to the Prosecution witness, Kolleh had said that Bockarie got the weapons from Charles Taylor. The Witness denied these accusations, but said that Mosquito (a.k.a. Bockarie) once ordered him, in early 1999, to transport heavy weaponry from Bunumbu to Issa Sesay. Sesay then ordered him to escort the artillery to Morris Kallon in Magburaka Town. According to the Witness, after the retreat from Freetown, the RUF had taken the weapons to Bunumbu, on the Kono side of the Moa River. Kolleh said the weapons were stored them there because the malfunctioning ferry kept them from shipping the weapons across the river to Kailahun.

l. Cross-examination

Throughout cross-examination, the Prosecution utilized a straightforward strategy of seeking to impeach Sam Kolleh's credibility. In an effort to make the Witness' testimony sound incredible, Counsel for the Prosecution repeatedly inquired about Kolleh's recollection of his positions within the RUF, and what he remembered about events that had occurred during his time in the RUF. For instance, when asked about the diamond trade, Kolleh had referred to it as top military secret, which was only to the knowledge of top commanders.[108] Prosecutors highlighted the fact that, although Kolleh denied being a top commander, he had detailed knowledge about the diamond trade, and was trusted with transporting diamonds on a number of occasions. These inconsistencies might affect the witness' credibility and how much weight the Trial Chamber assigns his testimony.

Under cross-examination, Kolleh again acknowledged lying to the TRC and the Prosecution investigators about his identity and telling them he was captured and trained by the RUF in Sierra Leone, when in fact an NPFL artillery officer named Arthur captured him in Liberia. Upon further questioning, the Witness testified that he was with Arthur at an artillery base at Camp Naama for a couple of months doing household chores. Kolleh claimed that Arthur sent him for training at Camp Naama so that Kolleh could work with Arthur on artillery weapons. Kolleh denied that Camp Naama was an NPFL training base, testifying instead that it served more as a reserve camp for the NPFL. He admitted that there was training at an area called Crab Hole, where he was sent by Arthur. Kolleh acknowledged that he initially thought he was training for the NPFL, but discovered from the lecture classes that he was training with the RUF. Based on this, the Prosecution suggested that the RUF was a sub-unit of the NPFL. The Witness denied these accusations. Justice Sebutinde asked Kolleh why he did not return to Arthur after he found out that the training had nothing to do with the NPFL. The Witness responded that Arthur and his group had moved positions and was no longer at Camp Naama, so the Witnessed stayed at the base and continued his training. He also testified he could not escape or leave, because he needed a pass to travel, and he was afraid of punishment if caught and returned to the RUF.

The Prosecution asked what Kolleh had to gain from fighting for over a decade in another country, and why he would bring war to Sierra Leone. The Witness responded that he had nothing to gain. When the Prosecution suggested that his motive might have simply been that he was forced, Kolleh stated he was not forced. Kolleh also testified under cross-examination about the killings of Rashid Mansaray and others. The Witness stated that Issa Sesay had ordered him to bring Rashid to Foday Sankoh, but that Bockarie intervened and apparently executed Rashid. Kolleh stated that he was assigned to investigate the murders. Sesay reportedly told Kolleh that he did not kill Rashid, and Kolleh testified that he was not in the position to question the truth this statement. Kolleh disputed the Prosecution's suggestion that Rashid's body was torn apart, and that his head was put on a stick.

The Prosecution asked the Witness about John Vincent. Kolleh testified that he talked to Vincent in Monrovia after the interviews with Prosecution investigators in 2003. When the Prosecution pointed out that Kolleh had previously told the Court he did not leave Sierra Leone until 2005, the Witness explained that he never said he went to Monrovia in 2003. Rather, he was interviewed in 2003 and left for Liberia in 2005 to return to school. The Witness denied Prosecution allegations that John Vincent was an SSS at the time Kolleh met with him. He further denied that Vincent had spoken to him about his interviews because they both worked for Taylor.

[108] *Taylor*, Trial transcript, November 3, 2010, pg. 127-8 (lines 28-3).

i. "Operation Stop Elections"

The Prosecution asked Kolleh about "Operation Stop Elections." The Prosecution claims that during the elections in Sierra Leone, rebels launched an extremely violent operation, which, amongst other crimes, involved the amputation of limbs as a symbolic fear technique to prevent the civilian population from casting their votes. Although the Witness acknowledged he was in the area when the operation was at its fiercest, and confirmed he was a senior officer at the time, Kolleh stated that he had no knowledge of amputations, or of any other atrocities committed during the operation. The Witness stated he first heard about these crimes during the interview with the TRC.

ii. Child soldiers

When the Witness was questioned about the use of child soldiers within the RUF, he acknowledged the RUF had a Small Boys Unit (SBU), but said he personally could not distinguish the boys' individual ages based on appearance, and he never asked any of them how old they were. Kolleh said children would be selected on height, so that children who appeared 15 years of age or older could be trained and were given arms. Those supposedly under the age of 15 were, according to Kolleh, only provided domestic assistance to commanders. The Witness denied that the RUF gave arms to boys in the SBU. This is inconsistent with testimony from Defense witness Musa Fayia, a former-senior member of the RUF, who said that the RUF did arm children from ten years of age up. It is also incompatible with Defense witness Charles Megebe's testimony that the whole world knows about the atrocities committed by the RUF in which children under the age of 15 were recruited into the rebel force. Kolleh was then asked about Musa, whom the Prosecution claimed was Kolleh's companion from the SBU. Kolleh denied that Musa was a child when he, along with another youth named "Saar" or "Sahr," accompanied Kolleh. Justice Sebutinde questioned the Witness further about Musa's and Saar's tasks when they were with Kolleh. However, Kolleh seemed to avoid answering these inquiries directly, at first. Kolleh eventually acknowledged that Saar carried a gun, but maintained that Musa was his unarmed bodyguard. Kolleh disputed suggestions that the boys were SBUs.

When asked about Small Girls Units within the RUF, the Witness said his troop had two girls who stayed on the base with Memunatu Sesay, but that they only did domestic tasks.

iii. Kailahun massacre of 1998

When the Witness was questioned about his knowledge of the 1998 Kailahun massacre, Kolleh said he was in Pendembu at the time. According to the Witness, Sankoh was in Kailahun during the massacre. When Counsel for the Prosecution asked Kolleh whether he ever killed anyone, the Witness responded that he could not recall. The Witness denied knowing about whether Bockarie was disappointed after all of the RUF's setbacks in that period. He further denied knowing whether Bockarie ordered the killing of detainees in Kailahun.

The Prosecution then read testimony from DIS-149, a protected Defense witness in the *RUF* trial, which stated that "Sam Kolleh" was in Kailahun between 1997 and 1999. The Prosecution also read the testimony of DAG-048, another protected witness, from the *RUF* trial, which stated that Bockarie, when on his way from Kailahun to Pendembu in March 1998, ordered his bodyguards, including Sam Kolleh, to kill people. The Witness repeatedly stated he was in Pendembu at the time of the massacre, and

disputed Prosecution allegations that he only claimed not to know anything about the massacre because he was trying to hide his own conduct in the bloodbath.

iv. Transporting arms between Liberia and Sierra Leone

The Prosecution suggested that the RUF stripped weapons off heavy armored vehicles and transported the weapons across a river. Kolleh stated this was impossible, as he only knew about canoes being used for transport over the river. Obviously, heavy weapons cannot fit into a canoe, Kolleh testified. In response, the Prosecution noted that his statement was inconsistent with DCT-008's testimony that ammunition was transported in vehicles from Liberia to the RUF in Sierra Leone. According to the Prosecution, it also conflicted with Issa Sesay's testimony that trucks loaded with weapons arrived from Liberia. The Witness repeated that it was impossible, as the only method of transportation over the river was by canoe. When asked whether there were bridges at borderline, Kolleh first denied but later acknowledged that he had previously stated there was a bridge at Pujahun were you could cross over to Liberia.

v. The combined forces of the AFL and RUF in the attack on Guinea

The Prosecution read to Kolleh parts of his witness summary in which the Defense had stated that he would talk about, amongst other topics, the combined forces of the Armed Forces of Liberia (AFL) and the RUF in the attack on Guinea. In Court, however, the Witness strongly denied that the RUF joined forces with the AFL and Taylor's Anti-Terrorist Unit (ATU) to attack Guinea. The Witness also denied that the RUF was under direct command of Charles Taylor, and refuted suggestions that the RUF assisted Liberia in their attack on Guinea and Lofa County. According to Kolleh, the RUF and the Liberian forces fought the same enemy, but did not join forces. In order to discredit Kolleh's testimony, the Prosecution referred to various testimonies contradicting Kolleh's statement. For example, Defense witness John Vincent testified that the ATU, AFL and RUF joined forces to attack Guinea. Moreover, other witnesses claimed Issa Sesay sent men to Lofa County, Bockarie sent fighters into Liberia after the 1999 Freetown attack, and Taylor ordered Issa Sesay (once Sesay became the RUF interim leader) to attack Guinea. The Witness claimed to have no knowledge of any of this.

Kolleh also refuted the suggestion that the RUF attacked Guinea because Taylor wanted to punish Guinea for assisting the LURD's attacks in Liberia. The RUF attacked Guinea, Kolleh testified, to cast fear, because the Kamajors (a militia force loyal to the Sierra Leonean government, which was fighting against the RUF) kept attacking the RUF from Guinea.

vi. January 6, 1999 Freetown invasion

According to the Witness, he was in Manowa listening to both RUF and BBC radio when Freetown was attacked in January 1999. According to Kolleh, he heard over the RUF radio that Bockarie ordered Sesay to tell Rambo to stop his move into Freetown, on account of a problem between SAJ Musa and the RUF. Kolleh also testified that he heard Sam Bockarie telling Robin White, in an interview on the BBC radio, that his forces had reached Freetown. However, Kolleh said, Robin White later interviewed Gullit who said that the RUF and the SLA were fighting under separate commands. Accordingly, Kolleh testified, Sam Bockarie's statement that his forces were in Freetown was a lie.

The Prosecution played a recording of an interview between the BBC radio and Sesay, which had been broadcast on the day of the invasion. In that interview, Sesay stated he was calling from the executive mansion and claimed that the combined AFRC and RUF forces had taken over Freetown. According to Sesay's statements in the radio interview, Gullit was the top commander who had led the troops during the attack. Sesay's statements to the BBC substantially contradict Kolleh's testimony that the RUF never entered Freetown on 6 January 1999, that the RUF and the AFRC were not fighting under the same command and that SAJ Musa, and that Gullit did not accept the RUF in Freetown. The Prosecution suggested that the Witness was trying to hide the RUF's involvement in the Freetown invasion after SAJ Musa's death, when Gullit called Sam Bockarie for reinforcement. Kolleh responded that he had never before heard the Sesay interview broadcast. Kolleh explained why the radio statements were not plausible, contending, for instance, that Gullit would not have asked Bockarie for reinforcements, because SAJ Musa and Bockarie were not friends. When the Prosecution said that Issa Sesay and other witnesses had testified to the Court that Gullit called Bockarie for reinforcements after SAJ Musa died, the Witness responded that this was not consistent with his own recollection.

The Prosecution asked whether the Witness knew about the RUF attack on Port Loco after Gullit contacted Bockarie. Kolleh stated that he had no knowledge of that, but confirmed Prosecution suggestions that the RUF attacked Waterloo after the Freetown invasion on January 6, 1999. However, Kolleh denied being present during the attack, testifying that he was wounded in the hospital at that time.

vii. Sam Bockarie's death

The Prosecution asked the Witness about his knowledge of the death of Sam Bockarie and his family. Kolleh said he heard about the killings on the radio in 2005, and that Pa Moriba, a former Vanguard, told him in 2006 that Benjamin Yeaten killed them. Reminding the Witness about his prior testimony in which he stated he did not know Benjamin Yeaten, Justice Sebutinde asked why he did not ask Pa Moriba about the man who killed one of his close associates and his family. The Witness responded this was not of his interest. Justice Sebutinde further suggested that it was strange that Kolleh had never heard about Benjamin Yeaten during the years he had lived in Liberia, since Yeaten was chief of security to Charles Taylor. The Witness restated that he had never heard about Yeaten before his conversation with Pa Moriba. When asked whether he knew who had murdered Superman, the Witness stated that Pa Moriba told him it was also Benjamin Yeaten.

viii. Interviews with the Special Court and the TRC

Prosecutors confronted Kolleh about the fact that his summary of evidence up to 12 May 2010 contained no mention of being interviewed in Freetown or interacting with former Chief Prosecutor, David Crane. The Prosecution further noted that the "Don Ray card," which Kolleh claimed was handed to him by Crane, was not listed as evidence by the Defense. Kolleh responded that he did not know why it was not included in his testimonial summary, since he had told the Defense team about his experience OTP interview in Freetown, and about receiving the card from David Crane. Kolleh strongly denied Prosecution allegations that he made the story up. The Prosecution then showed the Witness a letter from Don Ray in which Ray stated that he was assigned to work in Sierra Leone under UNAMSIL, but that he never talked to Crane about the Special Court. Ray's letter further stated that he never gave Crane the disputed card, and that he never met the Witness. However, Don Ray did acknowledge that he had distributed hundreds of these cards to civilians when he was in Kailahun. The Witness again denied receiving the card directly from Don Ray in Kailahun.

To undermine Kolleh's claims that OTP investigators repeatedly asked him about Taylor and diamonds, the Prosecution confronted Kolleh with the fact that the 173-page interview transcript contained no record of questions about Taylor or about diamonds. The transcript only appeared to cover questions about detained members of the RUF. According to the Prosecution, it was Kolleh himself who had initiated discussion about diamonds. The Witness denied this allegation, and suggested the Prosecution investigators did not record those parts of his testimony because his answers did not support their case.

During his entire testimony, Kolleh denied any wrongdoing and said it was fear of arrest that prompted him to give false testimony about his identity and on his recruitment into the RUF. In an attempt to discredit this testimony, the Prosecution pointed out that the Special Court had only arrested four people by the time Kolleh was interviewed. The Witness stated in response that he heard about many former-RUF members and Vanguards being arrested by the Court.

ix. Witness' involvement in Charles Taylor Defense team

Throughout his testimony in Court, the Witness claimed he had spoken to the Defense team only once since arriving in The Hague—the day after his arrival. Kolleh denied the Prosecution's suggestion that he also spoke to Taylor's Defense team over the weekend, prior to his testimony. The Prosecution attempted to discredit this testimony by showing the Witness an email the Prosecution had received from the Defense indicating that they would talk to Kolleh over the weekend to take further testimony. The Witness seemed confused about the date, and about what the Prosecution meant by weekend, but finally admitted that he talked to the Defense twice, first after his arrival and second over the weekend before his testimony in Court. The Prosecution then asked whether Kolleh had done any work for the Defense, such as recruiting witnesses or referring witnesses to speak to the Defense. The Witness denied this. Kolleh also denied referring Vincent to the Defense, contradicting Vincent's testimony that he was referred to the Defense by Sam Kolleh. These inconsistencies may raise credibility issues regarding Kolleh and/or other Defense witnesses.

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