



Case No. SCSL-2003-01-T
THE PROSECUTOR OF SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR
Thursday, 26 September 2013
11.00 a.m
APPEALS JUDGEMENT
APPEALS CHAMBER

Before the Judges:

Justice George Gelaga King, Presiding
Justice Emmanuel Ayoola

Justice Renate Winter
Justice Jon M Kamanda.
Justice Shireen Avis Fisher
Justice Philip Nyamu Waki

For Chambers:

Ms Rhoda Kargbo -Kevin Hughes
Ms Melissa Ruggiero - Ms Jennifer Beoku-Betts
Ms Jesenka Residovic - Ms Hannah Tonkin
Mr Kamran Choudhry - Ms Gaia Pergolo
Mr Rafael Silva - Ms Laura Murdoch
Ms Josephine Buck - Ms Hamidu Midlah Barrie

For the Registry:

Ms Binta Mansaray - Ms Fidelma Donlon
Ms Elaine Clarkson-Bola - Mr Thomas Alpha
Mr Samuel Njovana - Mr Sufflan Cole
Mr Hansel COP Mags-King - Mr Samuel J Fornah
Ms Francesc Ngaboh-Smart - Ms Zainab Fofanah
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis - Mr Nicholas Koumjian.
Mr Mohamed A Bangura - Ms Nina Tavakoli.
Ms Ruth Mary Hackler - Ms Ula Nathai-Lutchman.
Mr Coman Kenny - Mr Christopher Santora.
Mr Alain Werner - Mr David M Crane.
Rt Hon Sir Desmond de Silva - Mr James C Johnson

For the accused Charles Ghankay Taylor:

Mr Morris Anyah - Mr Eugene O'Sullivan.
Mr Christopher Gosnell - Ms Kate Gibson.
Ms Magda Karagiannakis - Mr James Laveli Supwood.
Ms Yael Vias Gvirsman - Mr Tamba James Kamara
Mr Michael Herz - Ms Szilvia Csevar
Ms Alexandra Popov - Mr Neehan Tharmaratnam

Office of the Principal Defender:

Ms Claire Carlton-Hanciles

1 Thursday, 26 September 2013

2 (Open session)

3 (Accused entered court)

4 (Upon commencing at 11.00 a.m.)

11:00:59 5 JUSTICE KING: Will the registry please call the case.

6 THE REGISTRAR: The Special Court for Sierra Leone is
7 sitting in an open session for the Appeal Judgement in the case
8 of the Prosecutor versus Charles Ghankay Taylor,
9 Justice George Gelaga King presiding.

11:01:32 10 JUSTICE KING: Thank you. I will now take appearances.

11 MS HOLLIS: Good morning, Mr president, Your Honours,
12 opposing counsel. Appearing for the Prosecution today,
13 Brenda J Hollis, Nicholas Koumjian, Mohamed A Bangura,
14 Nina Tavakoli, Ruth Mary Hackler, Ula Nathai-Lutchman,
11:01:55 15 Coman Kenny, Christopher Santora, Alain Werner. And we're also
16 pleased to have present special consultants David M Crane,
17 Sir Desmond de Silva, and James C Johnson.

18 JUSTICE KING: Thank you, Madam Prosecutor.

19 MR ANYAH: Good morning, Mr president, Good morning, Your
11:02:14 20 Honours, Madam Prosecutor. Good morning, members of the
21 Prosecution, good morning. May it please the court appearing for
22 the Defence this morning myself, Morris Anyah. I am joined by
23 co-counsel Dr Eugene O'Sullivan, Mr. Christopher Gosnell, and
24 Ms Kate Gibson. Our expert legal consultant,

11:02:33 25 Ms Magda Karagiannakis joins us. Some of those seated behind us
26 are legal assistants Mr Michael Hertz, Ms Yael Vias Gvirsman,
27 Ms Alexandra Popov, Ms Szilvia Csevar, and
28 Mr Neelan Tharmaratnam. Our team administrator is
29 Mr James Kamara, and he joins us. The Principal Defender of the

1 Special Court, Ms Claire Carlton-Hanciles. From our office in
2 Monrovia, Liberia, we welcome Laveli James Supuwood. And last
3 but not least our client, Charles Ghankay Taylor, is present in
4 court. Thank you.

11:03:16 5 JUSTICE KING: Thank you, Mr Anyah.

6 Good morning, Mr Taylor.

7 The Appeals Chamber for the special court for Sierra Leone,
8 SCSL, convenes today pursuant to its scheduling order, issued on
9 27 August 2013, to deliver the Judgement on Appeal in the case of

11:03:55 10 Prosecutor against Charles Ghankay Taylor. Following the

11 practice of the special court, I will not read out the text of
12 the judgement except for the disposition. Instead, I will
13 summarise some of the main findings of the Appeals Chamber. This
14 summary is neither exhaustive nor part of the judgement itself,
15 which is the only authoritative account of the Appeals Chamber's
16 decisions.

11:04:23

17 Copies of the written judgement will be available from the
18 Registrar after this hearing.

19 This case concerns the individual criminal liability of
20 Charles Ghankay Taylor, formerly president of Liberia for crimes
21 committed by the Revolutionary United Front and Armed Forces
22 Revolutionary Council in the territory of Sierra Leone between
23 30 November 1996 and 18 January 2002. These groups will be
24 collectively referred to as RUF/AFRC.

11:04:44

25 On 7 March 2003 an indictment against Mr Taylor was
26 confirmed by the SCSL and a warrant of arrest was issued. He
27 stepped down from the presidency of Liberia on 11 August 2003 and
28 went into exile in Nigeria. On 29 March 2006, he was arrested by
29 the Nigerian authorities and transferred into the custody of the

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1 Special Court. The trial commenced on 4 June 2007 and closed on
2 11 March 2011. On 26 April 2012 the Trial Chamber found
3 Mr Taylor guilty on all 11 counts of the indictment under
4 Article 6(1) of the Special Court Statute. Specifically, the
11:06:28 5 Trial Chamber found him individually criminally liable for aiding
6 and abetting the commission of crimes charged in all 11 counts
7 between 30 November 1996 and 18 January 2002 in the districts of
8 Bombali, Kailahun, Kenema, Kono, Port Loko and Freetown in the
9 Western Area. It further found Mr Taylor individually criminally
11:07:01 10 liable for planning the commission of crimes charged in all 11
11 counts between December 1998 and February 1999 in the districts
12 of Bombali, Kailahun, Kono, Port Loko, Freetown and the
13 Western Area of Sierra Leone.

14 On 30 May 2012 the Trial Chamber sentenced the Appellant to
11:07:28 15 a single term of imprisonment of 50 years. Both the Defence and
16 the Prosecution appealed. The Defence filed 45 grounds of appeal
17 but subsequently withdrew ground 35. The Prosecution filed four
18 grounds of appeal. In summary, the Defence challenges the
19 Trial Chamber's evaluation of the evidence, its finding that the
11:08:01 20 RUF/AFRC operational strategy was characterised by a campaign of
21 crimes against the civilian population of Sierra Leone, the
22 Trial Chamber's articulation of the law of individual criminal
23 liability, the Trial Chamber's conclusion that Mr Taylor's
24 individual criminal liability for the crimes charged in the
11:08:24 25 indictment was proved beyond a reasonable doubt, alleged
26 irregularities in the judicial process, and finally challenges
27 the sentence imposed by the Trial Chamber.

28 The Prosecution challenges the Trial Chamber's finding that
29 certain crimes were not properly pleaded in the indictment, the

1 Trial Chamber's failure to enter convictions for ordering and
2 instigating the commission of the crimes, and finally the
3 sentence imposed by the Trial Chamber.

11:09:11

4 The Appeals Chamber summarily dismisses Defence grounds 18,
5 20, and 33 in accordance with the standard of review on appeal
6 and the practice direction on the structure of grounds of appeal.

7 The Appeals Chamber has dealt with the remaining grounds of
8 appeal in sections 3 to 10 of the Appeal Judgement. I will now
9 summarise the Appeals Chamber's reasoning and conclusions.

11:09:38

10 The indictment.

11 Section 3 of the Appeals Judgement addresses grounds of
12 appeal relating to the indictment. In its ground 3 the
13 Prosecution submits that the Trial Chamber erred in law in
14 finding that the pleading of locations using inclusive language
15 such as, and I quote, "various locations" in a district,
16 "throughout" a district, was defective.

11:10:03

17 In the alternative, the Prosecution contends that the
18 Trial Chamber erred in law by failing to consider whether the
19 defects were cured or harmless. The Appeals Chamber concludes,
20 however, that it is for the Trial Chamber to determine in each
21 case whether non-specific and inclusive pleading of location is
22 sufficient in accordance with the accused's fair trial rights and
23 that in this case the Trial Chamber did not err in law in finding
24 that such pleadings of locations in the indictment was defective.

11:10:30

25 The Appeals Chamber further holds that even though a
26 Trial Chamber may, in the interests of justice, and consistent
27 with the rights of the accused, consider whether a defective
28 pleading was cured, the Prosecution may not rely on a defective
29 pleading on the expectation that it will be subsequently

11:10:58

1 rectified by the Trial Chamber. The Trial Chamber is not obliged
2 to find a cure for a defective indictment. For these reasons,
3 the Appeals Chamber dismisses Prosecution ground 3.

4 Evaluation of evidence.

11:11:48 5 Section 4 of the Appeal Judgement addresses grounds of
6 appeal relating to the Trial Chamber's evaluation of evidence.
7 In its 22 grounds of appeal, which are collectively referred to
8 as the evidentiary submissions, the Defence challenges the
9 Trial Chamber's evaluation of the evidence and its findings of
11:12:15 10 fact which may be grouped into three categories: One, challenges
11 to the Trial Chamber's articulation and general application of
12 the law of evidence; two, challenges to the Trial Chamber's
13 specific findings of fact based on alleged systematic errors in
14 the evaluation of evidence; and three, challenges concerning
11:12:43 15 other errors the Trial Chamber allegedly made in its evaluation
16 of particular evidence.

17 The contention of the Defence on appeal is that Mr Taylor's
18 conviction rests largely on hearsay evidence often uncorroborated
19 which the Defence submits constitutes errors of law and fact. In
11:13:13 20 regard to the alleged errors of fact, the Appeals Chamber rejects
21 the submission that the Trial Chamber relied on uncorroborated
22 hearsay evidence in reaching findings of fact.

23 Having reviewed the Trial Chamber's reasoning on findings
24 in detail, the Appeals Chamber concludes that the Trial Chamber
11:13:35 25 relied on a combination of direct, circumstantial, and hearsay
26 evidence in reaching its findings and the evidence could equally,
27 if not more accurately, be characterised as direct and
28 circumstantial evidence supported by hearsay evidence.

29 In regard to the alleged error of law, the Appeals Chamber

1 rejects the Defence submission that uncorroborated hearsay
2 evidence can never be the sole or decisive basis for a
3 conviction, since the authorities on which the Defence relies do
4 not support this submission.

11:14:20 5 The Appeals Chamber notes that the general chamber of the
6 European Court of Human Rights in the case of
7 Al-Khawaja and Tahery held that reliance on an uncorroborated
8 hearsay statement as the sole or decisive basis for a conviction
9 is not precluded as a matter of law and does not, per se, violate
11:14:48 10 the accused's rights to a fair trial.

11 The Defence also argues that the Trial Chamber erred in law
12 in its approach to adjudicated facts. The Appeals Chamber,
13 however, finds that the Trial Chamber applied the established
14 approach of the Special Court regarding adjudicated facts which,
11:15:19 15 as Defence argued before the Trial Chamber, is consistent with
16 the jurisprudence and the Rules of the Special Court. The
17 Appeals Chamber finds no error.

18 With regard to the alleged systematic errors in the
19 evaluation of evidence, and particular errors in specific
11:15:43 20 findings of fact, the Appeals Chamber concludes that the
21 Trial Chamber properly articulated the law, carefully and
22 cautiously evaluated the evidence and explained in detail its
23 evaluation of the evidence and findings of fact.

24 Under this Court's Statute, Rules, and jurisprudence which
11:16:10 25 create a framework for evidentiary evaluation that is flexible
26 while principled, the Trial Chamber has the primary obligation to
27 assess and weigh evidence and is given broad discretion to do
28 carefully -- to do so. That discretion is not limitless,
29 however, and the Trial Chamber is required to carefully and

1 cautiously evaluate the totality of the evidence and the record
2 in accordance with the fundamental principles of the presumption
3 of innocence and the fairness of the proceedings.

11:16:58

4 The Appeals Chamber holds that the Defence based its
5 challenges on legally erroneous formulas and proscriptions that
6 would lead to unreasoned or categorical acceptance or rejection
7 of evidence. The Appeals Chamber further holds that the
8 Trial Chamber properly articulated and properly applied the law
9 consistent with the institute, the Rules, and this Chamber's
10 jurisprudence.

11:17:22

11 In explaining the Trial Chamber's evaluation of the
12 evidence, the trial judgement meticulously and extensively sets
13 out the parties' submissions at the trial on each allegation, the
14 evidence relevant to each allegation, the Trial Chamber's
15 evaluation of that evidence, and the Trial Chamber's ultimate
16 finding based on evaluation of the relevant evidence.

11:17:41

17 This deliberate and detailed approach has unquestionably
18 facilitated the Appeals Chamber's review of the Trial Chamber's
19 reasoning and findings. Having reviewed the Trial Chamber's
20 evaluation of the evidence in light of the parties' submissions,
21 the Appeals Chamber concludes that the Trial Chamber thoroughly
22 evaluated the evidence for its credibility and reliability and
23 applied the standard of proof beyond reasonable doubt when
24 determining the sufficiency of the evidence supporting a
25 conviction.

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11:18:30

26 The Appeals Chamber further concludes that all findings of
27 fact challenged by the Defence were reasonable in light of the
28 evidence as a whole and the Trial Chamber's careful and cautious
29 approach to the evaluation of evidence.

1 For these reasons, the Appeals Chamber finds no merit in
2 the evidentiary submissions.

3 The RUF/AFRC operational strategy.

4 Section 5 of the Appeal Judgement addresses grounds of
11:19:10 5 appeal relating to the Trial Chamber's findings regarding the
6 RUF/AFRC operational strategy. The Trial Chamber found that the
7 RUF/AFRC operational strategy was characterised by a campaign of
8 crimes against the Sierra Leonean population including the crimes
9 charged in all 11 counts of the indictment which were
11:19:37 10 inextricably linked to the strategy of the military operations
11 themselves. This strategy entailed a campaign of terror against
12 civilians as a primary modus operandi to achieve military gain at
13 any civilian cost and political gains in order to attract the
14 attention of the international community and improve their
11:20:07 15 negotiating stance with the Sierra Leonean government.

16 In grounds 17 the Defence submits that no reasonable trier
17 of fact could have found that the RUF/AFRC had an operational
18 strategy to commit crimes. The Appeals Chamber accordingly
19 considered whether the Trial Chamber's findings reasonably
11:20:36 20 demonstrates first a consistent pattern of crimes against
21 civilians as opposed to opportunistic and sporadic commission of
22 crimes; second, the RUF/AFRC leadership's involvement in
23 organising, directing, and perpetrating crimes; and third, that
24 the commission of crimes was directed to achieving the RUF/AFRC's
11:21:04 25 political and military goals.

26 First, the Appeals Chamber opines that the Trial Chamber
27 reasonably found a consistent pattern of crimes against civilians
28 by the RUF/AFRC throughout the indictment period. In each period
29 of the conflict, the RUF/AFRC directed a widespread and

1 systematic attack against the civilian population of Sierra Leone
2 through the commission of crimes which included killings,
3 enslavement, physical violence, rape, sexual slavery, and looting
4 against large numbers of civilian victims. Each and all of these
11:22:00 5 crimes were horrific and shocked the conscience of mankind.

6 Second, in the Appeals Chamber's view, the Trial Chamber's
7 findings fully support the conclusion that throughout the
8 indictment period this pattern of crimes against civilians was
9 organised, ordered, directed, and committed by the RUF/AFRC
11:22:28 10 leadership. The Trial Chamber's findings detailed the personal
11 and direct involvement of the RUF/AFRC leadership in the
12 commission of crimes against civilians and included
13 Sam Bockarie's personal attacks against civilians in the
14 Kenema District, the repeated instructions by Bockarie,
11:22:54 15 Johnny Paul Koroma, Issa Sesay, Alex Tamba Brima, and others to
16 make areas "fearful," by which they meant killing, mutilating,
17 raping and burning, the organised and systematic abduction and
18 enslavement of men, women, and children, and the direct
19 involvement of many commanders in many crimes.

11:23:24 20 Third, the Appeals Chamber concludes that throughout the
21 indictment period the Trial Chamber's findings demonstrate that
22 crimes against individual civilians were directed to achieving
23 the RUF/AFRC's political and military goals. The Appeals Chamber
24 notes that crimes against civilians continued to be used to
11:23:49 25 achieve political and military goals even as those goals changed
26 during the course of the conflict.

27 Crimes of enslavement, sexual violence, and conscription
28 and use of child soldiers, as well as involving physical violence
29 and acts of terror were committed throughout the indictment

1 period to support and sustain the RUF/AFRC and enhance its
2 military capacity and operations. Throughout that period, the
3 RUF/AFRC leadership used forced farming for its sustenance,
4 forced labour for its logistics, children for its soldiers, and
11:24:40 5 sexual violence and slavery to undermine the stability of the
6 civilian communities. To obtain the weapons it needed, the
7 RUF/AFRC leadership enslaved civilians to mine diamonds, used
8 children as their guards, and terror to ensure RUF/AFRC
9 domination. When the RUF/AFRC seized and maintained new
11:25:13 10 territory, the same pattern of crimes was repeated.

11 During the junta period, faced with a need to maintain its
12 new-found authority, the RUF/AFRC committed crimes against
13 civilians to minimise dissent and resistance and punish any
14 support for President Kabbah, the CDF, or ECOMOG. Following the
11:25:40 15 intervention and their defeat by ECOMOG, struggling to regroup
16 and regain lost territory, the RUF/AFRC committed crimes against
17 civilians to sustain itself, clear and hold territory, control
18 the population, eradicate support for its opponents, and attract
19 the attention of the international community. During the
11:26:07 20 Freetown invasion, the RUF/AFRC devastated Freetown in order to
21 secure the release of Foday Sankoh and force the government to
22 the negotiating table.

23 After the Freetown invasion and Lome Peace Accord, having
24 achieved Sankoh's freedom and place in government through the
11:26:35 25 commission of crimes against civilians, the RUF/AFRC committed
26 further crimes against civilians to maintain itself as a fighting
27 force and to ensure the continued supply of diamonds.

28 The Appeals Chamber is further satisfied that the
29 Trial Chamber's findings show that the RUF/AFRC used acts of

1 terror as its primary modus operandi throughout the indictment
2 period. The RUF/AFRC pursued a strategy to achieve its goals
3 through extreme fear by making Sierra Leone "fearful." The
4 primary purpose was to spread terror, but it was not aimless
11:27:29 5 terror. Barbaric brutal violence was purposefully unleashed
6 against civilians with the aim of making them afraid, afraid that
7 there would only be more unspeakable violence if they continued
8 to resist in any way, continued to stay in their communities or
9 dared to return to their homes. It also made governments and the
11:27:57 10 international community afraid, afraid that unless the RUF/AFRC's
11 demands were met thousands more killings, mutilations,
12 abductions, and rapes of civilians would follow. The conflict in
13 Sierra Leone was bloody because the RUF/AFRC leadership
14 deliberately made it bloody.

11:28:25 15 For these reasons, the Appeals Chamber affirms the
16 Trial Chamber's finding that the RUF/AFRC operational strategy
17 was aimed at achieving its political and military goals through a
18 campaign of crimes against the Sierra Leonean civilian
19 population, using terror as its primary modus operandi.

11:28:53 20 Taylor's acts, conduct, and mental state.

21 Section 6 of the Appeals Judgement -- of the Appeal
22 Judgement summarises the Trial Chamber's factual findings as to
23 Mr Taylor's acts, conduct, and mental state during the indictment
24 period. These factual findings have been affirmed.

11:29:21 25 The Trial Chamber found that during the indictment period,
26 Taylor directly or through intermediaries supplied or facilitated
27 the supply of arms and ammunition to the RUF/AFRC. He sent small
28 but regular supplies of arms and ammunition and other supplies to
29 the RUF/AFRC from 1997 to 1998 and substantial amounts of arms

1 and ammunition to the RUF/AFRC from 1998 to 2001. He also
2 facilitated much larger shipments of arms and ammunitions from
3 third party states to the RUF/AFRC, including the Magburaka
4 shipment in late 1997 and the Burkina Faso shipment in late 1998.

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5 The Trial Chamber also found that during the indictment period,
6 Mr Taylor provided ongoing advice and encouragement to the
7 RUF/AFRC and that there was ongoing communication and
8 consultation between him and the RUF/AFRC leadership. From the
9 time of the intervention, he advised the RUF/AFRC leadership to

11:30:47

10 attack, capture, and maintain control over Kono District, a
11 diamondiferous area, for the purpose of trading diamonds with him
12 for arms and ammunition. He also provided advice to the RUF/AFRC
13 in respect of peace negotiations and disarmament including
14 advising Issa Sesay and not to disarm and to resist disarmament

11:31:19

15 in Sierra Leone.

16 The Trial Chamber further found that Mr Taylor provided the
17 RUF/AFRC with military personnel and provided sustained and
18 significant communications and logistics support. Communication
19 support enhanced the capability of the RUF/AFRC leadership to
20 plan, facilitate, or order RUF/AFRC military operations during
21 which crimes were committed, enabled the RUF/AFRC to coordinate
22 regarding arms shipments, diamond transactions and military
23 operations, and assisted the RUF/AFRC to evade attacks by ECOMOG
24 forces.

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25 The logistical support he provided - the RUF guesthouse,
26 the provision of security escorts, the facilitation of access
27 through checkpoints, and the much-needed assistance with
28 transport of arms and ammunition by road and by air support -
29 enhanced and sustained the provision of arms and ammunition by

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1 Mr Taylor to the RUF/AFRC. He also provided a range of other
2 support including financial support, safe haven, medical support,
3 herbalists and food, clothing, cigarettes, alcohol, and other
4 supplies.

11:33:03 5 In regard to the Freetown invasion of January 1999, the
6 Trial Chamber found that in early November 1998, Sam Bockarie
7 requested arms and ammunition from Mr Taylor to support a major
8 attack. Bockarie and an RUF/AFRC delegation then went to
9 Monrovia to seek Taylor's advice and to secure the arms and
11:33:32 10 ammunition needed for the attack. Sam Bockarie met with
11 Mr Taylor in Monrovia where they designed a plan, the
12 Bockarie/Taylor plan, for the RUF/AFRC forces to carry out a
13 two-pronged attack on Kono and Kenema with the ultimate objective
14 of reaching Freetown. Taylor instructed Bockarie to make the
11:33:58 15 operation "fearful" in order to force the government into
16 negotiation and to free Foday Sankoh from prison. He also
17 stressed to Bockarie the need to first capture Kono for its
18 diamond worth.

19 Taylor was further instrumental in procuring the
11:34:24 20 Burkina Faso shipments for the RUF/AFRC to use in the Freetown
21 invasion. The shipment was unprecedented in its volume. On his
22 return and following discussions with his commanders, Bockarie
23 briefed Taylor and Taylor instructed Bockarie to use all means to
24 get to Freetown. The Trial Chamber found that by the beginning
11:34:50 25 of the indictment period, Taylor knew of the RUF and the crimes
26 it had previously committed. He also knew that in early 1996,
27 disgruntled by the decision to hold elections before a peace
28 agreement was signed, Sankoh ordered Operation Stop Election
29 during which RUF forces committed numerous atrocities against

1 civilians including carving RUF on the chests of civilians and
2 the amputation of the fingers and/or hands of those who attempted
3 to vote.

4 The Trial Chamber further found that Taylor knew of the
11:35:56 5 RUF/AFRC operational strategy and intention to commit crimes, as
6 well as the ongoing crimes committed by the junta, as early as
7 August 1997, following his election as president of Liberia. His
8 national security adviser provided him with daily briefings
9 including press and intelligence reports regarding the situation
11:36:21 10 in Sierra Leone. As president of Liberia, Taylor was also a
11 member of the ECOWAS Committee of Five on the situation in
12 Sierra Leone and would have received and read ECOWAS reports on
13 Sierra Leone. Reports on the crimes taking place in Sierra Leone
14 were "at the core" of discussions by the ECOWAS Committee of
11:36:53 15 Five. At his trial, Mr Taylor testified that if someone was
16 providing support to the RUF/AFRC by April 1998 they would be
17 supporting a group engaged in a campaign of atrocities against
18 the civilian population of Sierra Leone.

19 He further testified that in May 1998 there were news
11:37:21 20 reports of a horrific campaign being waged against the civilian
21 population in Sierra Leone, and by August 1998 the RUF/AFRC's
22 crimes were notorious. The Trial Chamber accepted this
23 testimony.

24 The law of individual criminal liability.

11:37:48 25 Section 7 of the Appeal Judgement addresses grounds of
26 appeal relating to the Trial Chamber's articulation of the law of
27 individual criminal liability.

28 The Defence submits in grounds 11, 16, 19, 21 and 34, that
29 the Trial Chamber erred as a matter of law in articulating the

1 law of individual criminal liability under Article 6(1) of the
2 Statute. As with all issues of law, the Appeals Chamber looks
3 first to the constitutive documents of the Special Court; that is
4 to say, the agreement between the government of Sierra Leone and
11:38:36 5 the United Nations and the statute of the Special Court which the
6 accused -- the Appeals Chamber has heard that the object and
7 purpose of the statute is to ensure that "all those who have
8 engaged in serious violations of international humanitarian law,
9 whatever the manner in which they may have perpetrated, or
11:39:11 10 participated in the perpetration of those violations, must be
11 brought to justice."

12 The prohibition and criminalisation of attacks against
13 civilians is one of the essential principles of international
14 humanitarian law, and this principle is firmly established in the
11:39:34 15 Statute. The Appeals Chamber identifies the actus reus and
16 mens rea elements for the forms of individual criminal liability
17 set out in Article 6(1) by ascertaining customary international
18 law applicable at the time the crimes were committed. In this
19 regard, it examines its own jurisprudence, the post Second World
11:40:03 20 War jurisprudence, and other sources of international law as
21 provided in Rule 72 bis. In addition, the chamber looks to the
22 jurisprudence of the ICTY and ICTR for guidance.

23 First, with respect to the actus reus of planning
24 liability, the Defence contends that the Trial Chamber erred by
11:40:31 25 failing to require and find that Taylor planned particular
26 concrete crimes. The Appeals Chamber rejects this submission.
27 In several cases, it has upheld planning convictions for crimes
28 committed in a wide geographic area, over an extensive period of
29 time, and involving a large number of victims, and in none of

1 those cases was it required that an accused be found to have
2 planned a particular or concrete crime. The Appeals Chamber sees
3 no error in the Trial Chamber's articulation of the law of
4 planning liability.

11:41:13 5 Second, with respect to the actus reus of aiding and
6 abetting liability, the Appeals Chamber rejects the Defence
7 submission that the Trial Chamber erred in law by failing to find
8 that Taylor's assistance was to the crime as such, by which it
9 means that the Trial Chamber was required to find that Mr Taylor
11:41:37 10 provided assistance to the physical actor who committed the
11 actus reus of the crime and that the assistance was directly used
12 in the perpetration of the specific crimes. Having considered
13 the statute and jurisprudence, the Appeals Chamber concludes that
14 the actus reus of aiding and abetting liability is established by
11:42:03 15 an accused's acts and conduct that have a substantial effect on
16 the commission of the crimes, not by the particular manner by
17 which the accused assisted the commission of the crimes, the
18 Appeals Chamber further concludes that aiding and abetting
19 liability, specifically provided for in Article 6(1) of the
11:42:28 20 Statute, applies equally to those most responsible for the
21 large-scale and organised commission of crimes and those
22 responsible for the commission of individual or isolated crimes.

23 In the Appeals Chamber's view, where the evidence
24 establishes that the crimes were committed in the implementation
11:42:50 25 of a plan or strategy to commit such crimes, triers of fact may
26 properly consider whether, by aiding and abetting the planning,
27 preparation, execution of the plan or strategy, an accused's act
28 and conduct thereby had a substantial effect on some or all of
29 the crimes committed in furtherance of the plan or strategy.

1 Third, with respect to the mens rea of aiding and abetting
2 liability, the Defence claims that the Trial Chamber erred by
3 applying a "knowledge standard" rather than a "purpose standard"
4 in the assessment of Taylor's mental state regarding the
11:43:41 5 consequences of his acts and conduct. The Appeals Chamber
6 rejects this submission. It holds that under customary
7 international law, an accused's knowledge of the consequences of
8 his acts or conduct - that is, an accused's "knowing
9 participation" in the crimes - is a culpable mens rea standard
11:44:09 10 for individual criminal liability.

11 The Appeals Chamber does not accept the Defence submissions
12 that the law of aiding and abetting liability violates the
13 principle of personal culpability. It rejects the suggestion
14 that the law applied by the Trial Chamber criminalises all
11:44:29 15 assistance to parties to an armed conflict. The Appeals Chamber
16 concludes that the requirement that the acts or conduct of the
17 accused had a substantial effect on the commission of the crimes
18 ensures that there is a sufficient causal link, a criminal link,
19 between the accused and the commission of the crimes before an
11:44:53 20 accused's conduct may be adjudged criminal. This requirement is
21 sufficient to ensure distinctions between those who may have had
22 an effect on non-criminal activity and those who had a
23 substantial effect on crimes. The Appeals Chamber further holds
24 that the distinction between criminal and non-criminal acts of
11:45:19 25 assistance is not drawn on the basis of the act in the abstract
26 but on its effect in fact.

27 It also holds that the convictions entered by the
28 Trial Chamber are fully in accordance with the strict
29 requirements that an accused can only be held liable for his own

1 conduct and only when the actus reus and mens rea elements of
2 participation in the commission of the crimes are proved beyond
3 reasonable doubt.

4 Finally the Appeals Chamber concludes that mere awareness
11:46:04 5 that the possibility crimes will be committed in an armed
6 conflict does not suffice for the imposition of criminal
7 responsibility under the law, and that the Trial Chamber did not
8 rely on awareness of such a possibility. Rather, based on the
9 specific and concrete information of which Mr Taylor was aware,
11:46:26 10 the Trial Chamber found that Mr Taylor knew of the RUF/AFRC
11 operational strategy, knew of its intention to commit crimes, and
12 was aware of the essential elements of the crimes.

13 Having concluded that customary international law is clear
14 as to the actus reus and mens rea elements of aiding and abetting
11:46:52 15 liability, the Appeals Chamber rejects the Defence submission
16 that there is evidence of opinio juris and state practice
17 modifying customary international law. In the Appeals Chamber's
18 view, the examples offered by the Defence remain at the level of
19 mere assertion and the law on which the Defence relies is not
11:47:20 20 supported by the law as actually articulated and applied by the
21 Trial Chamber. The Appeals Chamber agrees with the law
22 articulated by the Trial Chamber's articulation and application
23 of the law.

24 Finally, this Appeals Chamber is not persuaded by the
11:47:42 25 recent ICTY, International Criminal Tribunal for the former
26 Yugoslavia, in Perisic that "specific direction" is an element of
27 aiding and abetting liability under customary international law.
28 The Appeals Chamber opines that the ICTY's jurisprudence does not
29 contain a clear, detailed analysis of the authorities supporting

1 the conclusion that specific direction is an element under
2 customary international law. Although the Perisic
3 Appeals Judgement introduces novel elements in its articulation
4 of specific direction which may perhaps be developed in time,
11:48:40 5 this Appeals Chamber is not persuaded that there are cogent
6 reasons to depart from its holding that the actus reus of aiding
7 and abetting liability under article 6(1) of the Statute and
8 customary international law is that the accused's act and conduct
9 of assistance encouragement and/or moral support had a
11:49:08 10 substantial effect on the commission of each crime charged for
11 which he's to be held responsible.

12 Accordingly, the Appeals Chamber concludes that specific
13 direction is not an element of the actus reus of aiding and
14 abetting liability under Article 6(1) of the Statute or customary
11:49:34 15 international law.

16 For these reasons, the Appeals Chamber dismisses Defence
17 grounds 16, 21, and 34.

18 Taylor's criminal liability.

19 Section 8 of the Appeal Judgement addresses grounds of
11:49:55 20 appeal relating to the Trial Chamber's conclusions that Mr Taylor
21 is individually criminally liable for the crimes charged in the
22 indictment and found proved beyond reasonable doubt.

23 In grounds 22 to 32, the Defence submits that the
24 Trial Chamber erred in law in concluding that the actus reus of
11:50:19 25 aiding and abetting liability was proved beyond reasonable doubt.
26 The Appeals Chamber notes that the crimes charged in the
27 indictment were committed in furtherance of the RUF/AFRC
28 operational strategy to achieve its political and military goals
29 through a campaign of crimes against the Sierra Leonean civilian

1 population using terror as its primary modus operandi.

2 The Appeals Chamber affirms the Trial Chamber's qualitative
3 and quantitative assessment of the effect of Taylor's acts and
4 conduct in the commission of the crimes in light of the whole of
11:51:21 5 its findings, the specific factual circumstances, and the
6 consequences established by the evidence.

7 The Appeals Chamber further affirms the Trial Chamber's
8 conclusion that Mr Taylor's acts and conduct had a substantial
9 effect on the commission of the crimes by enabling the RUF/AFRC
11:51:45 10 operational strategy, enhancing the RUF/AFRC capacity to
11 implement its operational strategy and encouraging the RUF/AFRC's
12 military operations and attacks against the civilian population
13 in furtherance of its operational strategy.

14 The Appeals Chamber accordingly affirms the Trial Chamber's
11:52:11 15 conclusion that the actus reus of aiding and abetting liability
16 was proved beyond reasonable doubt.

17 In grounds 17 and 19, the Defence challenges the
18 Trial Chamber's conclusion that Mr Taylor possessed the requisite
19 mens rea for aiding and abetting liability. The Appeals Chamber
11:52:39 20 accepts the Trial Chamber's finding that the only reasonable
21 conclusion, based on the totality of the evidence, was that
22 Mr Taylor knew of the RUF/AFRC operational strategy and its
23 intention to commit crimes. The Appeals Chamber further affirms
24 the Trial Chamber's conclusion that Mr Taylor knew that his
11:53:03 25 support to the RUF/AFRC would assist the commission of crimes in
26 the implementation of the RUF/AFRC operational strategy. The
27 Trial Chamber also found that Mr Taylor was aware of the specific
28 range of crimes being committed during the implementation of the
29 RUF/AFRC operational strategy and was aware of the essential

1 elements of the crimes. The Appeals Chamber agrees with the
2 Trial Chamber's conclusion that Mr Taylor possessed the requisite
3 mens rea for aiding and abetting liability.

4 In grounds 10 to 13, the Defence challenges the
5 Trial Chamber's conclusions that the actus reus of planning
6 liability was proved beyond reasonable doubt for crimes committed
7 during the Freetown invasion. This issue concerns the
8 relationship between the Bockarie/Taylor plan for the invasion of
9 Freetown and the commission of the crimes during and after the

10 Freetown invasion, and whether the Bockarie/Taylor plan had a
11 substantial effect on the crimes committed. The Appeals Chamber
12 recalls that Taylor instructed Bockarie to make Freetown
13 "fearful." The Appeals Chamber accepts the Trial Chamber's
14 findings that Alex Tamba Brima, otherwise known as Gullit,

15 complied with specific orders from Sam Bockarie in the
16 implementation of the Bockarie/Taylor plan, including Bockarie's
17 repeated orders to make Freetown "fearful" and to use terror
18 against the civilian population of Freetown. The Appeals Chamber
19 finds that there was extensive evidence on the record regarding

20 the communications and coordination between Sam Bockarie and
21 Gullit, and between Taylor and Sam Bockarie, that commenced
22 following SAJ Musa's death, and agrees with the Trial Chamber's
23 conclusion that Gullit was brought into the Bockarie/Taylor plan
24 following the initial contact with Bockarie after SAJ Musa's

25 death. The Appeals Chamber further finds that there was
26 extensive evidence on the record regarding the orders given by
27 Bockarie to Gullit and Gullit's compliance with these orders, and
28 accepts the Trial Chamber's finding that Bockarie exercised
29 control over Gullit to implement the plan he designed with

1 Taylor. The Appeals Chamber therefore affirms the
2 Trial Chamber's conclusion that the actus reus of planning
3 liability was proved beyond reasonable doubt.

4 In grounds 14 and 15, the Defence challenges the
11:56:25 5 Trial Chamber's conclusion that Mr Taylor possessed the requisite
6 mens rea for planning the crimes under the 11 counts for which he
7 was convicted. The Appeals Chamber holds that the Trial Chamber
8 was correct in finding that Mr Taylor knew of the RUF/AFRC
9 operational strategy and intention to commit crimes, and that the
11:56:50 10 RUF/AFRC was committing all crimes charged in the indictment.

11 The Appeals Chamber further holds that the Trial Chamber was
12 correct in finding that by his "make fearful" and "use all means"
13 instructions to Sam Bockarie, Taylor demonstrated his intention
14 that the crimes charged in counts 1 to 11, which were part of the
11:57:18 15 RUF/AFRC operational strategy, would be committed during the
16 execution of the Bockarie/Taylor plan. For these reasons, the
17 Appeals Chamber affirms the Trial Chamber's finding that
18 Mr Taylor possessed the requisite mens rea for planning
19 liability.

11:57:40 20 The Appeals Chamber accepts Defence ground 11 in part. The
21 Trial Chamber provided no reasons for entering convictions in the
22 Disposition for planning crimes committed under counts 1 to 8 and
23 11 in Kono District between December 1998 and February 1999, and
24 the Appeals Chamber holds that to that extent, the Disposition
11:58:12 25 for the planning conviction must be modified to exclude Kono
26 District under those counts.

27 In ground 41, the Defence submits that the Trial Chamber
28 erred in law in entering cumulative convictions for the offences
29 of rape and sexual slavery. The Appeals Chamber agrees with the

1 Trial Chamber that, for the reasons it stated, the offences of
2 rape and sexual slavery each require proof of an element not
3 required by the other, and accordingly rejects the Defence's
4 submission.

11:58:57 5 In its grounds 1 and 2, the Prosecution submits that the
6 Trial Chamber erred in law and in fact in failing to convict
7 Mr Taylor of the additional modes of liability of ordering and
8 instigating certain crimes, for which he has already been found
9 guilty as an aider and abettor. The issue presented solely
11:59:25 10 concerns the descriptive characterisation, not the gravity, of
11 Mr Taylor's criminal liability for the crimes for which he
12 already stands convicted. The Appeals Chamber holds that in
13 determining matters of guilt and punishment, the trier of fact
14 and the Appeals Chamber itself must be guided by the interest of
11:59:47 15 justice and the rights of the accused, and avoid formulaic
16 analysis that has no regard for the whole of the circumstances
17 and the facts of individual cases.

18 In the Appeals Chamber's view, ordering and instigating are
19 inadequate characterisations of Taylor's culpable acts and
12:00:09 20 conduct, as those forms of participation in fact fail to fully
21 describe the Trial Chamber's findings. The Appeals Chamber holds
22 that aiding and abetting fully captures Taylor's numerous
23 interventions over a sustained period of five years, the variety
24 of assistance he provided to the RUF/AFRC leadership in the
12:00:34 25 implementation of its operational strategy, and the cumulative
26 impact of his culpable acts and conduct on the "tremendous
27 suffering caused by the commission of the crimes" for which he is
28 guilty. Planning likewise fully captures Mr Taylor's additional
29 culpable acts and conduct for the crimes committed during and

1 after the Freetown invasion. These descriptions of Taylor's
2 culpable acts and conduct fully reflect the Trial Chamber's
3 findings on Mr Taylor's authority and leadership role. The
4 Appeals Chamber concludes that the Prosecution has failed to
12:01:17 5 demonstrate an error occasioning a miscarriage of justice and
6 rejects its submissions.

7 For these reasons, the Appeals Chamber grants Defence
8 ground 11 in part, finds that the Disposition for the planning
9 conviction should be modified to exclude Kono District under
12:01:43 10 grounds 1 to 8 and 11, dismisses the remainder of that ground,
11 and dismisses Defence grounds 10, 12 to 15, 17, 19, 22 to 32 and
12 41, and Prosecution grounds 1 and 2 in their entirety.

13 Alleged irregularities in the judicial process.

14 Section 9 of the Appeal Judgement addresses grounds of
12:02:18 15 appeal relating to what the Defence terms irregularities in the
16 judicial process.

17 In grounds 36, 37 and 38, the Defence alleges that
18 Mr Taylor's right to a fair and public trial was breached, in
19 violation of the Statute and Rules of the Special Court. The
12:02:40 20 Appeals Chamber finds that Mr Taylor was provided a public trial
21 in accordance with Article 17(2) of the Statute. In light of the
22 Judgement itself, and having considered the parties' submissions,
23 the Appeals Chamber concludes that the Trial Chamber properly
24 deliberated in accordance with Rule 87. The Appeals Chamber
12:03:04 25 holds that Trial Chamber II was properly constituted at all times
26 during Mr Taylor's trial. Finally, the Defence contention that
27 Justice Sebutinde's judicial independence was compromised solely
28 because she was appointed to the International Court of Justice
29 is unsupported, disingenuous and ludicrous.

1 To the extent that the Alternate Judge considered that he
2 had a right, as an Alternate Judge, to present his personal views
3 in the courtroom or render a dissenting opinion, he was not
4 acting according to Article 12(4) of the Statute and Rule 16 bis
12:03:57 5 of the Rules of this Court, and the Appeals Chamber holds
6 accordingly. While the fact that the Alternate Judge made the
7 statement and the manner of its delivery were irregular and ultra
8 vires, the statement has in no way prejudiced Mr Taylor's rights.
9 The content of the Alternate Judge's statement has been
12:04:22 10 extensively relied on by the Defence. The Appeals Chamber holds
11 that it does not adjudicate between the Trial Chamber and the
12 personal views of the Alternate Judge. The Defence has tested
13 the assertions made in the Alternate Judge's statement by the
14 appellate process, which it has invoked and through which it
12:04:45 15 challenges the Trial Judgment as to the sufficiency of the
16 evidence and reasoning supporting the Trial Chamber's
17 conclusions. It is exclusively and solely the mandate of the
18 Appeals Chamber to determine whether or not the Trial Chamber was
19 in error in concluding that the guilt of Mr Taylor was proved
12:05:13 20 beyond reasonable doubt, taking into account the entire record
21 and all the arguments raised on the appeal by the parties.

22 The Appeals Chamber finds no prejudice to Mr Taylor by the
23 omission of the name of the Alternate Judge on the cover page of
24 the Judgment and Sentencing Judgment. It recalls, however, the
12:05:44 25 practice of the Court to include on the cover pages the names of
26 all judges, including alternate judges, who participated in the
27 case. The Appeals Chamber finds no reason to depart from this
28 practice. The Appeals Chamber therefore directs the Registrar to
29 amend the cover page by including the name of the Alternate

1 Judge, the Honourable El Hadji Malick Sow.

2 The Defence has failed to show that any of its allegations
3 in grounds 36, 37 and 38 amount to a violation of any provision
4 of the Statute and/or the Rules or that any of the facts alleged
12:06:33 5 caused Mr Taylor's prejudice. Nothing raised amounts to an error
6 occasioning a miscarriage of justice and affecting the fairness
7 of the proceedings. These grounds are therefore dismissed in
8 their entirety.

9 In ground 39, the Defence asserts that the Trial Chamber
12:07:12 10 erred in law, fact and/or procedure in the decision on the
11 Defence Rule 54 motion requesting a judicial investigation. The
12 Appeals Chamber rejects the Defence's proposed legal standard as
13 the basis for invoking an investigation under Rule 54, since it
14 would allow speculation and mere conjecture to justify the
12:07:43 15 employment of the Court's full criminal powers. An order for a
16 judicial inquiry requested under Rule 54 is exceptional and
17 cannot be used as a fishing expedition by either party.
18 Accordingly, the Appeals Chamber holds that the Trial Chamber did
19 not err in denying the defence motion. Ground 39 is therefore
12:08:11 20 dismissed in its entirety.

21 The sentence.

22 Section 10 of the Appeal Judgement addresses grounds of
23 appeal relating to the sentence of 50 years imprisonment imposed
24 by the Trial Chamber. The Defence challenges this sentence in
12:08:36 25 grounds 42 to 45, and the Prosecution challenges it in its ground
26 4.

27 The Prosecution argues that the Trial Chamber erred in law
28 by holding that aiding and abetting liability generally warrants
29 a lesser sentence than other forms of criminal participation,

1 rather than considering the gravity of Mr Taylor's actual
2 criminal conduct. The Appeals Chamber accepts that the
3 Trial Chamber erred in its articulation of the law in this
4 respect. The plain language of Article 6(1) of the Statute
12:09:23 5 clearly does not refer to or establish a hierarchy of any kind
6 among forms of criminal participation in Article 6(1). In
7 addition, a hierarchy of gravity is contrary to the essential
8 requirement of individualisation that derives from the mandate of
9 the Court, principles of individual criminal liability and the
12:09:50 10 rights of the accused. Further, the totality principle requires
11 an individualised assessment of the total gravity of the
12 convicted person's conduct and individual circumstances. A
13 general presumption that aiding and abetting generally warrants a
14 lesser sentence is thus unfounded. In light of the foregoing,
12:10:18 15 the Appeals Chamber holds that the totality principle
16 exhaustively describes the criteria for determining an
17 appropriate sentence that is in accordance with the Statute and
18 Rules, and further holds that under the Statute, Rules and
19 customary international law, there is no hierarchy or distinction
12:10:42 20 for sentencing purposes between forms of criminal participation
21 under Article 6(1). The Appeals Chamber concludes that the
22 Trial Chamber erred in law by holding that aiding and abetting
23 liability generally warrants a lesser sentence than other forms
24 of criminal participation.

12:11:04 25 The Defence complains that the Trial Chamber erred in law
26 in giving weight to aggravating factors not argued by the
27 Prosecution in its submission. The Appeals Chamber holds that a
28 Trial Chamber is not limited to considering only factors
29 identified by the parties in their sentencing submissions. The

1 Appeals Chamber therefore sees no error.

2 The Defence contends that the Trial Chamber erred in law in
3 considering the extraterritoriality of Taylor's conduct and
4 Taylor's breach of trust as culpable facts. The Appeals Chamber
12:11:56 5 rejects these submissions. As the Trial Chamber found, before
6 the invasion of Sierra Leone in March 1991, Taylor publicly
7 threatened on the radio that "Sierra Leone would taste the
8 bitterness of war" because Sierra Leone was supporting ECOMOG
9 operations in Liberia impacting Taylor's NPFL forces. Taylor's
12:12:29 10 acts and conduct did not only harm the victims of the crimes and
11 their immediate relatives, but fueled a conflict that became a
12 threat to international peace and security in the West African
13 sub-region. The Appeals Chamber accordingly concludes that it
14 was proper for the Trial Chamber to consider the extraterritorial
12:12:55 15 nature and consequences of Taylor's acts and conduct in assessing
16 the gravity of the totality of his culpable conduct.

17 The Appeals Chamber also endorses the Trial Chamber's
18 findings that the international community and Sierra Leoneans
19 placed their trust in Taylor to help end the conflict and that
12:13:19 20 Taylor publicly purported to accept that trust and work in the
21 interest of peace, while he, in reality, abused that trust by
22 aiding and abetting the widespread and systematic commission of
23 crimes against the civilian population of Sierra Leone throughout
24 the indictment period and by planning the Freetown invasion. The
12:13:50 25 Appeals Chamber therefore concludes that the Trial Chamber
26 reasonably and properly considered Taylor's abuse of trust in
27 assessing the gravity of the totality of his culpable conduct.

28 The Defence further submits that the Trial Chamber
29 erroneously double-counted, to Taylor's detriment, his position

1 as Head of State. The Appeals Chamber opines that it was proper
2 for the Trial Chamber to consider the different aspects of
3 Taylor's acts and conduct in assessing the gravity of the
4 totality of Taylor's culpable conduct, and that the Trial Chamber
12:14:33 5 did not double-count the same factor.

6 The Defence contends that the Trial Chamber erred in
7 failing to consider Taylor's expressions of sympathy and
8 compassion as a mitigating factor and erred in holding that the
9 fact that a sentence is to be served in a foreign country should
12:15:01 10 not be considered in mitigation. The Appeals Chamber is of the
11 opinion that the Trial Chamber was correct in holding that
12 serving a sentence in a foreign country is not a factor in
13 mitigation. The Appeals Chamber holds that in order for remorse
14 to be considered a mitigating factor, it must be real and
12:15:32 15 sincere. In the instant case, the Trial Chamber acknowledged
16 that Mr Taylor accepted that crimes were committed in
17 Sierra Leone but that he did not demonstrate real and sincere
18 remorse meriting recognition for sentencing purposes. The
19 Appeals Chamber agrees.

12:15:49 20 The Defence contends that the Trial Chamber erroneously
21 failed to follow Special Court sentencing practices with respect
22 to aiding and abetting liability as established in previous
23 cases. The Trial Chamber properly referred to the gravity of the
24 crimes for which Mr Taylor was convicted and considered his role
12:16:15 25 in their commission. Further, the Trial Chamber compared the
26 circumstances of Mr Taylor's case with other cases that have been
27 determined by the Court. In light of the foregoing, the
28 Appeals Chamber concludes that the Defence fails to demonstrate
29 any discernible error in the exercise of the Trial Chamber's

1 discretion in sentencing.

2 Finally, the Defence complains that the Trial Chamber
3 imposed a "manifestly unreasonable" sentence in the circumstances
4 of this case, while the Prosecution complains that the sentence
12:17:00 5 imposed by the Trial Chamber fails to adequately reflect the
6 totality of Taylor's "criminal and overall culpability." The
7 Appeals Chamber opines that the sentence imposed by the
8 Trial Chamber is fair and reasonable in light of the totality of
9 the circumstances.

12:17:25 10 For these reasons, Defence grounds 42 to 45 and Prosecution
11 ground 4 are dismissed in their entirety.

12 This concludes the summary of the Judgement.

13 Mr Taylor, will you please rise.

14 For the foregoing reasons, the Appeals Chamber, pursuant to
12:18:29 15 Article 20 of the Statute and Rule 106 of the Rules of Procedure
16 and Evidence, noting the written submissions of the parties and
17 the oral arguments presented at the hearings on 22 and 23 January
18 2013, sitting in open session, unanimously, with respect to the
19 Defence grounds of appeal, notes that ground 35 has been

12:18:57 20 withdrawn, allows ground 11, in part, revises the Trial Chamber's
21 Disposition for planning liability under Article 6(1) of the
22 Statute by deleting Kono District under counts 1 to 8 and 11, and
23 dismisses the remainder of the ground, dismisses the remaining
24 grounds of appeal; with respect to the Prosecution's grounds of
12:19:26 25 appeal, allows ground 4 in part, holds that the Trial Chamber
26 erred in law in finding that aiding and abetting liability
27 generally warrants a lesser sentence than other forms of criminal
28 participation, and dismisses the remainder of the ground,
29 dismisses the remaining grounds of appeal; affirms the sentence

1 of 50 years imprisonment imposed by the Trial Chamber; orders
2 that this Judgement shall be enforced immediately pursuant to
3 Rule 119 of the Rules of Procedure and Evidence; orders, in
4 accordance with Rule 109 of the Rules of Procedure and Evidence,
12:20:14 5 that Charles Ghankay Taylor remains in the custody of the Special
6 Court for Sierra Leone pending the finalisation of arrangements
7 to serve his sentence.

8 Mr Taylor, you may be seated.

9 JUSTICE AYoola: I agree.

12:20:27 10 JUSTICE WINTER: I agree.

11 JUSTICE KAMANDA: I agree.

12 JUSTICE FISHER: I agree.

13 JUSTICE KING: I will now ask Justice Fisher to read out
14 her concurring opinion.

12:21:01 15 JUSTICE FISHER: Thank you, Mr President. I am authorised
16 to represent Justice Renate Winter, who joins me in this
17 concurrence.

18 I fully agree with the Appeals Chamber's reasoning and
19 conclusion as to the law of aiding and abetting liability.

12:21:16 20 However, I consider it necessary to further address two of the
21 Defence's arguments in support of its position that the elements
22 of aiding and abetting liability under customary international
23 law, as interpreted and applied in this case, are impermissibly
24 broad.

12:21:35 25 The Defence argues that the application of the law of
26 aiding and abetting as interpreted by the Trial Chamber is
27 overbroad in the context of crimes committed in armed conflicts,
28 and poses the question, "How do we define the limits where there
29 is nothing whatsoever intrinsic in the nature of the assistance

1 which tells us what is aiding and abetting," and the Defence
2 further warns that "the actus reus [of aiding and abetting
3 liability] can actually be quite easily fulfilled quite
4 unconsciously by the alleged aider and abettor." The
12:22:15 5 Appeals Chamber seriously considered this question and responds
6 in its holding that the law of individual criminal responsibility
7 does not criminalise just any act of assistance to a party to an
8 armed conflict, nor does it criminalise all acts or conduct that
9 may result in assistance to the commission of a crime. Stated
12:22:38 10 simply, the law does not impose strict liability.

11 The law on aiding and abetting criminalises knowing
12 participation in the commission of a crime where an accused's
13 willing act or conduct had a substantial effect on the crime.
14 I would add, by way of further explanation, that the customary
12:23:00 15 elements for aiding and abetting liability contain express
16 limitations to protect the innocent, regardless of the context in
17 which the crimes are committed. First, the accused's acts or
18 conduct must have a substantial effect on the crime. Second, the
19 accused must commit the acts with the knowledge that the acts
12:23:23 20 will assist in the commission of the crime or with awareness of
21 the substantial likelihood that they will. And third, the
22 accused must be aware of the essential elements of the crime
23 which he or she or their acts and conduct assist. Every case is
24 fact-specific, and in all cases the accused may challenge the
12:23:45 25 factual predicates of the essential elements, raise affirmative
26 defences recognised by law, and argue mitigating circumstances.

27 It is true, of course, that an accused may provide
28 assistance to both lawful and unlawful activities. However, no
29 system of criminal law excuses unlawful conduct because the

1 accused also engages in lawful conduct. The law presumes that
2 all of an accused's conduct is lawful. The Prosecution must
3 prove beyond reasonable doubt that some of the accused's conduct
4 is unlawful.

12:24:24 5 It is likewise true that liability for aiding and abetting
6 is not restricted to those who want the crimes to be committed.
7 Criminal law legitimately punishes those who know what they are
8 doing and proceed to act regardless of whether they desire or are
9 merely indifferent to the pain and suffering to which they
10 contribute.

11 The law is faithful to the principle that one is only held
12 accountable for his or her own acts. As with all forms of
13 criminal participation, it is up to the Trial Chamber to test the
14 facts it finds against the essential elements, mindful of the
12:25:04 15 limitations, the burden of proof and the presumption of
16 innocence. This is the routine task of judges, and there is
17 nothing different in the way that judges interpret and apply the
18 elements of aiding and abetting from the way they interpret and
19 apply the elements of any other mode of liability or substantive
12:25:22 20 crime. The Appeals Chamber unanimously determined that the
21 Trial Chamber committed no error in performing this task in the
22 present case.

23 I comment on the Defence's additional argument in support
24 of its overbreadth contention, because I consider it very
12:25:39 25 troublesome. The Defence argues that the essential elements of
26 aiding and abetting as applied and relied on by the Trial Chamber
27 are insufficient and require additional or different elements or
28 analysis because the concept of aiding and abetting is "so broad
29 that it would in fact encompass actions that are today carried

1 out by a great many States in relation to their assistance to
2 rebel groups or to governments that are well-known to be engaging
3 in crimes of varying degrees and frequency." Such assistance,
4 the Defence has argued, "is going on in many countries that are
12:26:20 5 supported in some cases by the very sponsors of this Court." By
6 this argument, the Defence purposely confuses customary
7 law-making with international law-breaking.

8 Furthermore, suggesting that the Judges of this Court would
9 be open to the argument that we should change the law or fashion
10 our decisions in the interests of officials of States that
11 provide support for this or any other international court is an
12 affront to the international criminal law and the judges who
13 serve it. The Defence has interjected a political and highly
14 inappropriate conceit into these proceedings, which has no place
12:26:59 15 in the courts of law and which has found no place in the
16 judgement of this Court. The Judges of this Court, like our
17 colleagues in our sister Tribunals, are sworn to act
18 independently, "without fear or favour, affection or ill-will,"
19 and to serve "honestly, faithfully, impartially and
12:27:22 20 conscientiously." To suggest otherwise casts a cloud on the
21 integrity of international judges in international criminal
22 courts generally, and the rule of law which we are sworn to
23 uphold, and encourages unfounded speculation and loss of
24 confidence in the decision-making process as well as in the
12:27:37 25 decisions themselves. I wish to make clear that this line of
26 argument is absolutely repudiated.

27 Judges do not decide hypothetical cases. They look to the
28 individual case before them and apply the law as they are
29 convinced it exists to the facts that have been reasonably found.

1 Reasonable minds may differ on the law. We are convinced that
2 the customary law on the elements of aiding and abetting are as
3 stated by the Trial Chamber and that application of the law to
4 the facts in this particular case was properly and fairly
12:28:13 5 calculated. As with all areas of the law, international criminal
6 law is founded on fact and experience. As was noted by an
7 eminent jurist more than a hundred years ago, law cannot be dealt
8 with as if it contained only the axioms and corollaries of a book
9 of mathematics. Judicial decisions require the exercise of human
12:28:36 10 judgement. Like the presumption of innocence, the presumption
11 that judges are acting independently in the exercise of their
12 best judgement in the case before them is fundamental to the rule
13 of law. Judges privileged to sit on international criminal
14 courts understand that the duty underlying both of these
12:28:55 15 presumptions is inviolable.

16 If the presumption of innocence outweighs the evidence of
17 personal culpability, courts of law will acquit the accused. The
18 rule of law requires respect for such decisions even by those who
19 disagree with them. In this case, the affirmed findings
12:29:16 20 overwhelmingly establish that Mr Taylor, over a five-year period,
21 individually and knowingly and secretly and substantially
22 assisted the perpetration of horrific crimes against countless
23 civilians in return for diamonds and power, while publicly
24 pretending that he was working for peace. It is the unanimous,
12:29:42 25 independent judgement of the three Trial Judges that composed the
26 Trial Chamber, and the five Appellate Justices that composed the
27 Appeals Chamber, that the presumption of innocence has been
28 overcome beyond a reasonable doubt both as to the substantive
29 crimes charged in the indictment and Mr Taylor's participation in

1 those crimes.

2 JUSTICE KING: This concludes the delivery of the
3 judgement. The written judgement will be made publicly available
4 from the Registrar. I thank you.

12:30:27

5 THE REGISTRAR: All rise.

6 (The hearing concluded at 12.30 p.m.)

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