



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 6 APRIL 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

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Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg  
Ms Doreen Kiggundu

For the Registry:

Mr Gregory Townsend  
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis  
Mr James Johnson  
Ms Kathryn Howarth  
Ms Ula Nathai-Lutchman  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Courtenay Griffiths QC  
Mr Terry Munday  
Mr Morris Anyah  
Mr Silas Chekera

1 Monday, 6 April 2009

2 [Open session]

3 [The accused present]

4 [Upon commencing at 9.30 a.m.]

09:29:53 5 PRESIDING JUDGE: Good morning. We will take the  
6 appearances first, please.

7 MS HOLLIS: Good morning Mr President, your Honours,  
8 opposing counsel. This morning for the Prosecution are James  
9 Johnson, Kathryn Howarth, Maja Dimitrova, Ula Nathai-Lutchman and  
09:32:54 10 myself, Brenda J Hollis.

11 PRESIDING JUDGE: Thank you. Yes, Mr Anyah.

12 MR ANYAH: Yes, good morning, Mr President, good morning  
13 your Honours, good morning counsel opposite. Appearing for the  
14 Defence this morning are Courtenay Griffiths QC, Mr Terry  
09:33:10 15 Munyard, myself Morris Anyah and Mr Silas Chekera. Thank you,  
16 Mr President.

17 PRESIDING JUDGE: Thank you, Mr Anyah. Well, today is  
18 fixed for the Defence motion for judgment of acquittal pursuant  
19 to Rule 98. Is the Defence ready to proceed?

09:33:28 20 MR ANYAH: Yes, we are, Mr President.

21 PRESIDING JUDGE: Mr Anyah, it is probably not necessary to  
22 remind you, but the Defence submissions are to not go beyond 1.30  
23 p.m. There is already an order existing in that regard.

24 MR ANYAH: We appreciate that, Mr President. Thank you.

09:33:54 25 PRESIDING JUDGE: Yes, all right. Please proceed.

26 MR ANYAH: May it please the Court. Mr President, as you  
27 have indicated we are here pursuant to Rule 98 of the Special  
28 Court Rules of Procedure and Evidence and we are here to move the  
29 Court respectfully in our submission to dismiss each and every

1 count of the second amended indictment against the accused,  
2 Charles Ghankay Taylor.

3 The basis for that application, or request, has to do  
4 primarily in our view with the law; the law that applies to this  
09:34:56 5 particular proceeding, that is Rule 98, its standard of review  
6 and the law that applies to the offences alleged in the  
7 indictment, in particular the modes of criminal liability that  
8 have been alleged as well as the elements of each of the  
9 respective offences.

09:35:23 10 In sum and substance, our position is that the evidence  
11 presented to date, viewed by a reasonable trier of fact, viewed  
12 in an objective manner does not support or is not sufficient or  
13 capable of supporting a conviction. Your Honours are  
14 well-familiar with the standard of Rule 98, namely, is the  
09:35:52 15 evidence capable of supporting a conviction? Indeed, the rule  
16 states it in the form that there is no evidence capable of  
17 supporting a conviction. But behind that provision is the  
18 jurisprudence, is the case law of the various ad hoc tribunals,  
19 the ICTY, the ICTR, as well as of course our Appeals Chamber and  
09:36:18 20 other decisions by the various Trial Chambers including your  
21 Honours' previous decisions.

22 At its core, the basis for our request has very little to  
23 do with the crime base evidence that has been led in this case.  
24 We have always maintained in various fora, public private and  
09:36:41 25 otherwise, that terrible things happened in Sierra Leone. The  
26 citizens of the Republic of Sierra Leone faced atrocities of  
27 unimaginable proportions. We have never denied that. In the  
28 course of the trial your Honours have seen several witnesses,  
29 double amputees, crime based witnesses who have been raped and

1 put through unimaginable trauma appeared before your Honours to  
2 recount the horror that they experienced. We do not dispute most  
3 of that and we say so respectfully.

4 However, the problem with this case from its inception has  
09:37:24 5 been the linkage evidence, the quality or lack thereof of the  
6 evidence linking Mr Taylor to the alleged offences. In  
7 proceeding today, emphasis will be placed on the lack of evidence  
8 going to each element of each mode of liability applicable under  
9 the statute and indeed applicable in one sense in customary  
09:37:56 10 international law, and in this sense I am referring to the mode  
11 of liability joint criminal enterprise. Those modes of liability  
12 under Article 6.1 being planning, instigating, ordering,  
13 committing, aiding and abetting in the planning, preparation or  
14 execution of an offence, as well as joint criminal enterprise  
09:38:22 15 which your Honours are well-familiar on the basis of the ICTY  
16 Tadic appeals decision of 15 July 1999 is subsumed, if you will,  
17 under Article 6.1 of our statute after having been embraced by  
18 our Appeals Chamber in the AFRC decision of last year.

19 And then there is the mode of liability under Article 6.3,  
09:38:49 20 superior criminal responsibility; in civil law practice some  
21 would call it respondeat superior. When those modes of  
22 liabilities are considered in detail, and their elements are  
23 examined, an objectively reasonable conclusion that we submit  
24 your Honours will arrive at is that many of those elements are  
09:39:14 25 lacking in this case. There is no evidence going to many of the  
26 individual elements of the modes of liabilities that have been  
27 alleged and that forms the basis for our application.

28 In proceeding I will just say a few words about the  
29 modalities of how I will proceed this morning. I don't

1 anticipate speaking for long because, as I have indicated, there  
2 is quite a substantial amount of crime based evidence that has  
3 been presented and we will focus primarily on the linkage  
4 evidence or the absence thereof.

09:39:49 5 First, I would like to lay out the factual record that  
6 supports our application; The various means of proof that we  
7 maintain should be the foundation for your examination of our  
8 application.

9 Second, I will suggest an approach, if you will, an  
09:40:10 10 analytical approach, that we submit the Court should adopt in  
11 dealing with this particular process, the Rule 98 process. This  
12 is really an analytical approach that other Trial Chambers  
13 including your Honours have adopted in various contexts when it  
14 comes to the midway submission of no case to answer.

09:40:33 15 Third, we will consider the indictment, not to challenge  
16 any matter dealing with its specificity or lack thereof for  
17 pleading, those matters are not appropriate as your Honours know  
18 for Rule 98 purposes, but to consider one particular issue,  
19 certain locations that have been alleged in the indictment which  
09:40:55 20 we maintain no evidence has been led in respect of.

21 Fourth, we will review the evidence focusing primarily on  
22 what evidence has been presented in connection with the various  
23 modes of liability of the respective offences.

24 Fifth, we will ask again more adamantly that you dismiss  
09:41:18 25 the 11 counts against the accused.

26 I will state when appropriate citations to the transcript  
27 of proceedings so that the record is clear given that this is in  
28 the nature of an oral submission. I will endeavour to provide to  
29 the stenographers citations to legal authority that I mention. I

1 have referred to Tadic, the Appeals decision, we will provide  
2 that to the stenographers. I do have a copy of the indictment I  
3 would like displayed on the overhead, or if the Court Management  
4 section has the original indictment, the one applicable right now  
09:41:56 5 from May of 2007, we would ask that it be displayed so that as we  
6 go through it everybody can follow along.

7 PRESIDING JUDGE: You want that displayed now, Mr Anyah?

8 MR ANYAH: It may be displayed now. It may be displayed at  
9 some other point in time, but I just put them on notice that when  
09:42:18 10 I get to a particular point where I refer to the locations in the  
11 indictment it would be appropriate to have it displayed if it  
12 pleases the Court.

13 PRESIDING JUDGE: We will make sure that is done.

14 MR ANYAH: Thank you, Mr President. First, the factual  
09:42:31 15 record. There have been 91 witnesses called live before your  
16 Honours. We started the trial on 7 January 2008. There have  
17 been two witnesses called pursuant to Rule 92 bis that the  
18 Defence withdrew its objections to; they never appeared before  
19 your Honours. TF1-169 and TF1-081. The respective exhibits  
09:43:06 20 associated with those witnesses are exhibits P-284 and 285 in  
21 connection with TF1-169 and exhibits P-204A, P204B and P204C in  
22 respect of TF1-081. There have been a total of about 473  
23 exhibits presented to date. At least this is by virtue of the  
24 information we last received on this score from CMS. 385  
09:43:46 25 exhibits for the Prosecution; 88 exhibits for the Defence.

26 In addition to the testimonial evidence, the 92 bis  
27 evidence, the exhibited evidence, we will rely on certain  
28 decisions your Honours have rendered. CMS227 is a joint filing  
29 by the parties dating to 26 April 2007, agreed facts and law. We

1 will rely on that document and its contents. CMS369 is a  
2 decision regarding the admissibility or admission of materials  
3 pursuant to Rules 89C and 92 bis. The date of that decision is 7  
4 December 2007. We will also rely on that decision.

09:44:45 5 CMS370, a decision on judicial notice, following the filing  
6 of a motion by the Prosecution. We will rely on that document  
7 dated also 7 December 2007. And more recently, on 23 March this  
8 year, in reference to CMS765 your Honours rendered a decision on  
9 a Defence application for judicial notice of certain facts to be  
09:45:13 10 adjudicated from the AFRC trial judgment. That is the factual  
11 basis underpinning our motion.

12 With respect to the analytical approach we propose, we  
13 suggest, that it seems appropriate that your Honours first  
14 articulate the law that applies to the various offences - I am  
09:45:41 15 speaking of the elements of the respective offences - after which  
16 an articulation of the respective modes of liability that have  
17 been pleaded in the indictment, following which it seems to us it  
18 would then be proper to assess the capability of the evidence  
19 presented thus far to support a conviction.

09:46:10 20 If we take, for example, Count 1, acts of terrorism, in  
21 that instance there are the elements of the offence generally  
22 speaking; there has to be acts or threats of violence directed at  
23 persons, or their property. The perpetrator has to act willfully  
24 in the sense that they were willful in making those civilians the  
09:46:45 25 object of those acts or threats of violence and then there is the  
26 element that the primary purpose of those acts or threats of  
27 violence be to spread terror amongst the civilians. So those we  
28 would submit in general constitute the core elements of the crime  
29 of terror, but in looking at Count 1 your Honours will then have

1 to examine in respect of Count 1 whether the seven modes of  
2 liability alleged in this case can be sustained; whether the  
3 Prosecution has presented any evidence concerning any of those  
4 seven modes of liability.

09:47:30 5 Did Mr Taylor plan to effect those acts of terrorism? Did  
6 he instigate them? Did he commit them? Did he order them? Did  
7 he aid and or abet in the planning, preparation or execution of  
8 them? Was the element of terror part of a joint criminal  
9 enterprise that he participated in? Or was he responsible for  
09:47:54 10 the crime of acts of terrorism on the basis of superior  
11 responsibility? That he knew or had reason to know of the acts  
12 of subordinates and failed to take reasonable measures to prevent  
13 or punish them.

14 That is the approach we suggest your Honours adopt.

09:48:14 15 Now, to the indictment. There are certain locations that  
16 we submit no evidence has been led on despite they being  
17 specifically stated in the indictment. Count 1, acts of  
18 terrorism, the particulars appear in paragraph 5. Yes, and we  
19 see the subheading "Burning" following which there is paragraph  
09:48:51 20 6.

21 If we go to the next page, the Prosecution alleges that  
22 burning occurred in the context of the acts of terrorism in Kono  
23 District, Freetown and Western Areas among other places. There  
24 is the phrase there at the top of the page "Including the  
09:49:10 25 following" and it delineates Kono District, it delineates  
26 Freetown and the Western Area.

27 We submit, and we stand to be corrected, that when you look  
28 at the locations dealing with Freetown and the Western Area no  
29 evidence has been led in respect of Goderich, no evidence had



1 been led in respect of Kent, no evidence has been led in respect  
2 of Grafton and then there is Tumbo, T-U-M-B-O. That is what the  
3 indictment uses as the spelling of this location.

09:50:00 4 The evidence led in relation to Freetown and a place called  
5 Tumbo has the spelling on the record as Tombo, T-O-M-B-O. That  
6 spelling was given by Alimamy Bobson Sesay, TF1-334. The  
7 relevant pages of the transcript are 8388 through 8389. The word  
8 spelt as it is in the indictment T-U-M-B-O does not appear in the  
9 record, we submit. We stand to be corrected, but we are fairly  
09:50:37 10 certain about that.

11 So in respect of those four locations, as concerns Freetown  
12 to the extent they have been specifically alleged and enumerated  
13 in the indictment, we ask that they be stricken.

14 Also with respect to Count 1, paragraph 7, Kono District.  
09:51:03 15 It is there said that burning took place in a place called  
16 Wendedu, W-E-N-D-E-D-U. The evidence on record has the spelling  
17 of that location as Wendadu, W-E-N-D-E-D-U - I am sorry, did I  
18 say D-E? It should be W-E-N-D-A-D-U. The two spellings are not  
19 the same and that spelling, the latter spelling I have just  
09:51:42 20 given, the one that appears on the record W-E-N-D-A-D-U was given  
21 by TF1-217, the relevant page number being 19399 at lines 17  
22 through 19. So in respect of Kono District we ask that the  
23 spelling as appears in the indictment and that location be  
24 stricken.

09:52:09 25 The Prosecution did not have to allege necessarily all of  
26 these locations, but they have chosen to do so and to the extent  
27 they have chosen to do so their proof must match the allegation  
28 and it does not in this context.

29 Counts 2 and 3, unlawful killings. Paragraph 11, Kono

1 District again. There is the allegation that unlawful killings  
2 took place in a place called Bomboafuidu B-0-M-B-0-A-F-U-I-D-U.  
3 We submit that there is no evidence on the record as of today's  
4 date of any unlawful killing taking place in that location. We  
09:53:06 5 therefore ask respectfully that it be stricken.

6 Also there is reference in respect of Freetown and the  
7 Western Area again to Tumbo, T-U-M-B-0. T-U-M-B-0, as spelt,  
8 does not appear in the record. We again ask that that location  
9 be stricken with respect to counts 2 and 3.

09:53:37 10 Counts 7 and 8, physical violence counts. It is alleged in  
11 paragraph 19 with respect to Kono that physical violence took  
12 place in a place called Kaima or Kayima, K-A-I-M-A or  
13 K-A-Y-I-M-A. With respect to the spelling K-A-I-M-A we ask that  
14 that spelling be stricken. The evidence on record pertains to a  
09:54:31 15 place K-A-Y-I-M-A, Kayima, and so for purposes of clarification  
16 we ask that you strike K-A-I-M-A. We do so respectfully.

17 Tumbo again also appears in the context of Freetown and the  
18 Western Area and we make the same application, by virtue of its  
19 spelling, that it be stricken.

09:55:01 20 Now there is Count 9 --

21 JUDGE SEBUTINDE: Mr Anyah, are you asking the Judges to  
22 strike out these names because there is no evidence adduced or  
23 what?

24 MR ANYAH: That is precisely the case, Justice Sebutinde.

09:55:16 25 The request of course is predicated on the applicable standard of  
26 review that there is no evidence capable of supporting a  
27 conviction in respect of the alleged offences in each of those  
28 areas as they have been named and spelled in the indictment.

29 Now, with respect to Count 9, child soldiers, conscripting

1 or enlisting child soldiers, your Honours will note that in  
2 paragraph 22 it alleges that these alleged crimes occurred  
3 throughout the Republic of Sierra Leone. That is what the  
4 particulars say. We don't have specific areas delineated in  
09:56:08 5 those particulars.

6 Well, if that is the case, then it necessarily flows that  
7 all of the occasions that I have just read from Goderich in  
8 Freetown to Kayima, Tombo and the like, could not necessarily be  
9 included in that allegation. And so it seems appropriate that  
09:56:38 10 there is a modification to that allegation that all of those -  
11 that the conscription and enlisting of child soldiers occurred  
12 throughout Sierra Leone, there is an exception and the exception  
13 would be the areas that I have just delineated in respect of the  
14 other counts where no evidence has been led because those areas  
09:56:58 15 do not appear on the record.

16 We submit that the same would be applicable to Counts 2 and  
17 3 of the indictment because in addition to delineating specific  
18 areas in Sierra Leone where it is alleged that these offences  
19 took place, it does say in the particulars that it occurred  
09:57:31 20 throughout Sierra Leone. The unlawful killings of an unknown  
21 number of civilians occurred throughout Sierra Leone. If that is  
22 the case and there is no mention of Goderich in the record, no  
23 mention of Kent, no mention of Tombo, or an incorrect spelling of  
24 Tombo, then we propose - indeed we submit - it is appropriate to  
09:57:55 25 dismiss or exclude rather all of those locations vis-a-vis Counts  
26 2 and 3. It would not be correct to say that unlawful killings  
27 took place throughout the Republic of Sierra Leone.

28 May I have a moment, Mr President?

29 PRESIDING JUDGE: Yes.

1 MR ANYAH: Now to the modes of liability. I will start  
2 with planning. The allegation of these modes, just to be  
3 specific, appear in paragraph 33 of the indictment. That is  
4 where the Prosecution has delineated articles, the modes of  
09:59:11 5 liability in Article 6.1 of the statute, the only exception being  
6 that joint criminal enterprise is not specifically enumerated in  
7 that article but nonetheless we all know it applies.

8 Planning. Your Honours have defined planning as implying  
9 that the accused - in this case Mr Taylor - either alone or in  
09:59:36 10 conjunction with others, did contemplate designing the commission  
11 of a crime at both the preparatory phase of the crime and the  
12 execution phase of the crime. Those words are important, whether  
13 it is a preparatory stage or whether it is the execution stage  
14 and they are used in the conjunctive, preparatory and the  
10:00:04 15 execution phase.

16 Also significant to planning is that the level of  
17 participation of the accused must be substantial. Your Honours  
18 have made this point in the AFRC decision at paragraph 765. The  
19 ICTR trial judgment in Akayesu, 2 September 1998, has made this  
10:00:36 20 observation. The Brdani n judgment of the ICTR, paragraph 268,  
21 the Krstic judgment of the ICTY paragraph 601. I suspect I said  
22 Brdani n was in the ICTR, but it should be the ICTY, and the  
23 Stakic trial judgment of the ICTY has also made this observation.  
24 The actus reus for planning requires that the accused together  
10:01:13 25 with others designated the criminal conduct that constitutes the  
26 charged crimes. The mens rea for planning involves direct intent  
27 in relation to the accused's planning. That is, the person must  
28 act with direct intent.

29 Alternatively, he or she may act with an awareness of the

1 substantial likelihood that the crime would be committed in the  
2 execution of the plan.

3 Now, what is important here is that the crime that is  
4 envisioned has to be a crime within Articles 2, 3 and 4 of our  
10:01:57 5 statute. It cannot just be any crime. The crime that is  
6 manifested by this substantial participation of the accused has  
7 to be one of the crimes in Articles 2, 3 and 4.

8 Now, let us take an example on the record and we submit  
9 that there is very little evidence of planning that has been  
10:02:17 10 adduced so far in this case. One example, there was a witness  
11 who came before your Honours, and this appears at page 2384 of  
12 the transcript. The witness testified that sometime in 1998, the  
13 witness being TF1-371, that Sam Bockarie received instructions  
14 from Charles Taylor --

10:02:49 15 PRESIDING JUDGE: Yes, Ms Hollis?

16 MS HOLLIS: I rise to raise a concern that any evidence  
17 given by this witness be disclosed in open session.

18 PRESIDING JUDGE: That was a protected witness obviously.

19 MS HOLLIS: Yes.

10:03:09 20 PRESIDING JUDGE: Well, you had better watch what the  
21 substance of your submissions are going to be, Mr Anyah. If you  
22 think you are going to tread on an area that is likely to  
23 disclose the identity of the witness then we may have to make  
24 some appropriate order.

10:03:32 25 MR ANYAH: I appreciate the concern by counsel opposite and  
26 we are mindful of that and I do not intend to violate your  
27 Honours' protective order.

28 PRESIDING JUDGE: All right. Go ahead please.

29 MR ANYAH: The witness said that Sam Bockarie received

1 instructions from Charles Taylor to maintain Kono District.  
2 Arguably someone might suggest that that is evidence of some kind  
3 of planning. Well, we look at the elements of planning. Is this  
4 allegation of instructions, vague as they may be, applicable to  
10:04:12 5 the preparatory stage of planning? Is it likewise - sorry, to  
6 the preparatory phase of the crime? Is it likewise applicable to  
7 the execution phase of the crime? Whatever crime your Honours  
8 may choose that it applies to, whether you say it applies to  
9 Count 1, terrorising the civilian population, we submit that when  
10:04:44 10 you apply the elements for planning that sort of allegation does  
11 not amount legally to planning. You have to also consider  
12 whether it involves or illustrates substantial participation by  
13 the accused. We submit that it does not.

14 Another witness said to this Court, this is at page 2640  
10:05:13 15 through 2642, that the January 1999 attack on Freetown was  
16 planned by the RUF and Charles Taylor. That is what the  
17 suggestion was. At page 2812, the same witness says that none of  
18 the senior RUF commanders were involved in the 6 January 1999  
19 invasion of Freetown. The witness says that - and this is at  
10:06:00 20 pages 2642 through 2644 - that the SLA/AFRC, not the RUF, took  
21 initiative - took the initiative for the Freetown invasion, in  
22 particular the West Side Boys and SAJ Musa. So when there is  
23 some evidence about an alleged plan between the RUF and  
24 Mr Taylor, and yet sometimes even from the same witness it is  
10:06:37 25 later on said that the RUF played a minimal role, if any, in the  
26 invasion of Freetown, and that it was the SLA and the AFRC that  
27 took the initiative, we submit when you apply the standard for  
28 Rule 98 that sort of evidence is not capable of supporting a  
29 conviction. And the word "conviction" is also important because

1 the jurisprudence speaks of a conviction in terms of proof beyond  
2 a reasonable doubt.

3 If you look at the evidence, even if believed, in this case  
4 let's assume you believe both versions, the versions the witness  
10:07:17 5 says initially, that Charles Taylor and the RUF planned this  
6 attack, and let's assume you believe the version that the witness  
7 says later on while testifying, that the RUF played a limited  
8 role, if at all, and that it was the SLAs and the AFRC, in  
9 particular SAJ Musa and the West Side Boys, who orchestrated this  
10:07:41 10 attack, you believe both accounts and you necessarily reasonably  
11 would conclude that such evidence is not capable of sustaining a  
12 conviction.

13 These are examples of planning. There is very little  
14 evidence in the record that demonstrates that Charles Taylor  
10:08:09 15 planned, as the word is meant in Article 6.1. Let's take another  
16 example of what another witness said. Another witness said - and  
17 this is at page 5744 of the transcript - that in February or  
18 March 1998 Superman, Denis Mingo, came back with ammunition he  
19 received via Daniel Tamba, also known as Jungle, who in turn  
10:08:48 20 received it from Charles Taylor for operation Fitti-Fatta to  
21 reclaim Koidu. That is what the witness said and I believe I  
22 have cited the transcript in the record. You apply the legal  
23 elements for planning. It really does not apply in this context.

24 This arguably, one might say, is more appropriately related  
10:09:23 25 to the mode of liability of aiding and abetting perhaps, but this  
26 is the sort of evidence the Prosecution has led in this case.  
27 All of this, in particular the issue of planning, is best  
28 illustrated when we consider the mode of liability of committing  
29 because that involves the most direct participation of the

1 accused in any of these crimes.

2 Your Honours have defined "committing" as involving direct  
3 and physical perpetration of the crime by the accused. We submit  
4 that your Honours can check each and every page of the transcript  
10:10:08 5 in this record. You will not find any evidence - none - led in  
6 respect of committing, that Charles Taylor personally in any way  
7 whatsoever, directly participated in the sense of physical  
8 perpetration of any of the charged offences. There is no  
9 evidence of that mode of liability. And what that means is that  
10:10:31 10 with respect to all eleven counts the mode of liability alleged,  
11 that he committed any of these offences, as that phrase is meant  
12 specifically in Article 6.1 fails. That mode of liability cannot  
13 be substantiated. That is our submission.

14 Let us consider the mode of liability instigating, whether  
10:10:58 15 or not Charles Taylor instigated any of these offences. The  
16 actus reus for instigating, as your Honours are familiar, that  
17 the perpetrator urged, encouraged or prompted another person to  
18 commit the offence. This could be done either impliedly or  
19 expressly and of course by acts and/or omissions. But what the  
10:11:28 20 case law says, and this is the important part we stress, is that  
21 the conduct, this act or omission of the alleged perpetrator, in  
22 this case - rather, this act or omission of the accused in this  
23 case - must contribute substantially to the conduct of the  
24 perpetrator for it to constitute instigation. And what does that  
10:11:58 25 mean? It means anybody can come in here and make any allegation  
26 that Charles Taylor did such-and-such to urge that somebody do  
27 certain crimes in Sierra Leone but, whatever the substance of the  
28 allegation is at this stage of the proceeding, the acts or  
29 conduct of Mr Taylor must contribute substantially to the conduct



1 or the perpetration of the offence.

2 I will give your Honours an example. At page 10049, rather  
3 10042 of the transcript, a witness testified that Charles Taylor  
4 told Johnny Paul Koroma, over the satellite phone, to capture  
10:13:03 5 Kono District. That is page 10492. Charles Taylor told Johnny  
6 Paul Koroma over the satellite phone to capture Kono District.  
7 That prompting, if you will, does it have a substantial  
8 contribution to the perpetration of the crime? In this case  
9 attacks on Kono district in February 1998. When you apply the  
10:13:40 10 legal standards for instigation, we submit that such conduct  
11 would not be found to contribute substantially to the attacks  
12 even if believed, and that is not recounting facts on the record  
13 that might contradict that. We are not asking that your Honours  
14 assess credibility or reliability of what these witnesses have  
10:14:02 15 said at this point.

16 But instructive on that is also the fact that the case law  
17 allows your Honours to disregard evidence that is obviously  
18 incredible or obviously unreliable. It does not allow for fine  
19 assessments of credibility or reliability, but it does allow your  
10:14:31 20 Honours the discretion, the leverage, to dismiss something that  
21 is completely ridiculous in many ways, or not consider rather  
22 something that is completely ridiculous.

23 Now, another example of instigation. A witness testified  
24 before this Court at page 11067 that at a secret meeting in  
10:15:20 25 Buedu, in April 1998, Ibrahim Bah said that Charles Taylor  
26 recognises the junta, advises them to obtain Kono for resources  
27 and to build an airfield. Charles Taylor recognises the junta.  
28 This is April of 1998. Your Honours recall that the phrase  
29 "junta" is often used in connection with the junta regime from 25

1 May 1997 through February of 1998, but this witness speaks of  
2 April 1998.

3 At page 11177 of the transcript, the same witness said to  
4 your Honours, he acknowledged, that he told the Sesay Defence  
10:16:28 5 team that he was not at the meeting in Buedu. The same witness  
6 could not confirm that Denis Mingo, Ibrahim Bah or Daniel Tamba  
7 attended the meeting. So you have a witness saying one thing on  
8 direct examination and most probably the other thing on  
9 cross-examination. Same witness.

10:17:01 10 The standard of review asks your Honours to consider this  
11 evidence, if believed. If you believe that there was such a  
12 meeting, and if you believe that Ibrahim Bah was conveying  
13 information from Charles Taylor, is it capable of supporting a  
14 conviction when the same witness asks you also to believe his  
10:17:23 15 statement that he wasn't in attendance at the meeting, he cannot  
16 confirm whether Ibrahim Bah was at the meeting or Daniel Tamba or  
17 Denis Mingo. When you apply the applicable standard of review to  
18 such items of evidence, we submit the allegation fails; at least  
19 for Rule 98 purposes.

10:17:50 20 There is also something that should be said about  
21 instigation. The law requires that there must be a causal link  
22 between the accused's act of instigation and the perpetrator's  
23 commission of the crime. So if you take the example of what I  
24 have said or just read that the witness said, that Charles Taylor  
10:18:20 25 recognises the junta and advises them to obtain Kono, there must  
26 be a causal link between these statements purportedly made by  
27 Charles Taylor and the perpetration of the crime; in this case  
28 the crime being suggested is an attack on Kono in 1998. The law  
29 requires it. The reference for that requirement,

1 jurisprudentially speaking, comes from the Appeals Chamber's  
2 judgment in the Fofana and Kondewa decision, at paragraph 54.  
3 The CDF appeals judgment. We would also cite the Limaj trial  
4 judgment from the ICTY at paragraph 515. We would cite the  
10:19:15 5 Brdanin trial judgment from the ICTY at paragraph 269. We would  
6 cite the Bagilishema trial judgment from the ICTR at paragraph  
7 30.

8 JUDGE SEBUTINDE: Mr Anyah, could you please repeat the  
9 paragraph for the Fofana judgment.

10:19:36 10 MR ANYAH: Yes, your Honour. Paragraph 54.

11 Now, we have not even considered the mens rea for  
12 instigating. The mens rea for instigating requires direct  
13 intent, not recklessness or negligence, direct intent.  
14 Otherwise, there is knowledge required in the nature of a  
10:20:02 15 substantial likelihood that a crime would be committed in the  
16 execution of that instigation. That means Mr Taylor must know  
17 that there is a substantial likelihood that what he is saying,  
18 recognise the junta, take over Kono, there is a substantial  
19 likelihood that that will be manifested. It is not on us to  
10:20:27 20 prove the evidence of that; The Prosecution has to make the link.  
21 They have to bring the evidence to show that he possessed this  
22 mens rea at the time he transmitted that instruction or urging or  
23 prompting, if you will.

24 Your Honours, if you examine closely the evidence that has  
10:20:47 25 been presented, and you examine the appropriate legal elements,  
26 you will find the evidence lacking.

27 Also on instigating, it must be shown that the accused  
28 intended to provoke or induce the commission of the crime, or  
29 that he had reasonable knowledge that a crime would likely be

1 committed as a result. This is another permutation of the same  
2 substantial likelihood prong of the two possibilities when it  
3 comes to the mens rea for instigating.

4 We consider the mode of liability, ordering, Article 6.1.

10:21:38 5 The same CDF trial - the same CDF case, in this context the Trial  
6 Chamber, in its judgment at paragraph 225, defined the crime or  
7 the mode of liability of ordering as involving a person in a  
8 position of authority ordering another in a subordinate position  
9 to commit an offence. That is essentially ordering. There must  
10:22:13 10 be the relevant mens rea for the crime with which the accused is  
11 charged, and then the accused must have foreseen the possibility  
12 of a criminal offence being committed as a result of his orders.

13 Some of the evidence that the Prosecution has presented in  
14 this context in our view is similar to this. It says Charles  
10:22:44 15 Taylor told Foday Sankoh to go to the Ivory Coast for the peace  
16 accord. This is at page 4488 of the transcript. Page 4488 of  
17 the transcript, the witness said Charles Taylor told Foday Sankoh  
18 to go to the Ivory Coast for the peace accord.

19 The same witness at page 4385 said that Charles Taylor  
10:23:18 20 ordered artillery to be sent to the RUF in Gbarnga. We take them  
21 one at a time. The first allegation he told Foday Sankoh to go  
22 to the Ivory Coast. The interesting thing about the allegation  
23 is that the witness places this prompting or this order in 1998.  
24 Now we have as a judicially noted fact in this case - I believe  
10:23:51 25 it is a judicially noted fact - that Foday Sankoh was in custody  
26 for most of 1998. Judicially noted fact U. In July 1998 Foday  
27 Sankoh was transferred from the custody of the Nigerian  
28 government to the custody of the Sierra Leonean government. We  
29 are also aware of the fact that Foday Sankoh - there has been

1 evidence in this case that Foday Sankoh was arrested in 1997 and  
2 that he remained in custody of the Nigerians until this July 1998  
3 when he was transferred to the custody of the Sierra Leoneans.

4 So you have a witness coming before your Honours and saying that

10:24:40

5 in 1998 Charles Taylor directed Foday Sankoh to go to the Ivory  
6 Coast, but Foday Sankoh was in prison. In fact, by October of  
7 1998, Foday Sankoh had been convicted of treason and sentenced to  
8 death in the High Court of Sierra Leone. How can that be

9 evidence of ordering when you apply the applicable legal

10:25:09

10 standard? Is it being suggested that Foday Sankoh was a  
11 subordinate to Charles Taylor at this point in time? We will  
12 come to joint criminal enterprise and seek to ascertain what sort  
13 of relationship existed between the two men during the various  
14 periods of time that the Prosecution alleges in various documents

10:25:32

15 constitute the temporal element of the joint criminal enterprise.  
16 We will deal with that later, but can this be deemed to be  
17 evidence of ordering? We submit it cannot.

18 You look at that evidence. You look at other evidence on  
19 the record. That sort of evidence is not capable of supporting a  
20 conviction to the extent that an essential element of one of the  
21 alleged modes of liability is absent. And, of course, I

10:25:52

22 appreciate the distinction between failure of proof vis-a-vis a  
23 mode of liability and failure of proof vis-a-vis an entire count.  
24 When I make the assertion I am making, your Honours I hope will  
25 appreciate that I am simply saying under Article 6.1 the mode of  
26 liability ordering has not been sustained.

10:26:20

27 The second allegation by the witness that Charles Taylor  
28 ordered artillery to be sent to the RUF in Gbarnga. The  
29 implication here is that Charles Taylor, through his orders,

1 facilitated the crimes of the RUF and the aspect of the provision  
2 of the ammunition will of course be applicable to the aiding and  
3 abetting mode of liability.

10:27:13 4 The difficulty with that evidence at page 4385, and it is  
5 also to be found at page 4393, is that it speaks of 1992. 1992,  
6 Charles Taylor ordering ammunition - well, artillery - to the  
7 RUF. The indictment period in this case commences on 30 November  
8 1996 and runs through 18 January 2002. Such an allegation falls  
9 outside the indictment period. That being the case, for what  
10:27:48 10 purpose might it otherwise be considered? Some would argue joint  
11 criminal enterprise - we will come to that - but when you  
12 consider other modes of liability, when you consider that the  
13 Prosecution framed the indictment in this case, they didn't have  
14 to limit it to November 1996 until January 2002. When you  
10:28:12 15 consider your obligations to the fair trial rights of the  
16 accused, and you apply the applicable standard of review under  
17 Rule 98, this type of evidence, considering the parameters of the  
18 indictment, its temporal parameters in our view, cannot support a  
19 conviction on the basis of ordering as a mode of criminal  
10:28:35 20 liability.

21 Let us consider aiding and abetting. Mr President, may I  
22 have a moment?

23 PRESIDING JUDGE: Yes, go ahead.

24 MR ANYAH: Thank you, Mr President. Aiding and abetting.  
10:29:50 25 Some key legal elements of the mode of liability of aiding and  
26 abetting. The first observation is that this mode of liability  
27 would include the phrase "assisting or encouraging" as it appears  
28 in the indictment. You have in the indictment this phrase. It  
29 recurs throughout the particulars of the indictment.

1           So for example in paragraph 5 it reads, "Members of the  
2 RUF, the AFRC, AFRC/RUF, junta or alliance and/or Liberian  
3 fighters including members and ex-members of the NPFL assisted  
4 and encouraged by, acting in concert with", but I stop there for  
10:30:44 5 the moment. The phrase "assisted and encouraged by" again  
6 appears in paragraph 9 with respect to the particulars of Counts  
7 2 and 3, it appears in the particulars of Counts 7 and 8 at  
8 paragraph 18, it appears in the particulars of Counts 4, 5 and 6,  
9 at paragraph 14, it appears in the particulars of Count 9 at  
10:31:29 10 paragraph 22, it appears in the particulars of Count 10  
11 enslavement, at paragraph 23, it appears in the particulars of  
12 pillage Count 11, at paragraph 28. That is merely a specific  
13 incident of aiding and abetting. It is not a separate and  
14 distinct mode of liability.

10:31:54 15           The actus reus for aiding and abetting - and I should give  
16 you the citation for this proposition that assisting and  
17 encouraged by an accused is a specific incident of aiding and  
18 abetting. That is the CDF appeals judgment at paragraph 71,  
19 especially at paragraph 72. We also rely on the Tadic appeals  
10:32:26 20 judgment at paragraph 229, as well as the Blaskic appeal judgment  
21 at paragraph 45 and paragraph 46. The actus reus for aiding and  
22 abetting. It must be shown that an accused gave practical  
23 assistance, encouragement or moral support which had a  
24 substantial effect on the perpetration of the crime, and here we  
10:33:05 25 rely on the AFRC trial judgment, your Honours' judgment, at  
26 paragraph 775.

27           The key phrase we focus on in this delineation of the actus  
28 reus is the last phrase, that the conduct of the accused act or  
29 omission must have a substantial effect on the perpetration of

1 the crime. In addition to that limitation there is also the  
2 necessary limitation that the crime in question has to be a crime  
3 that falls within the parameters of Articles 2 and 4 or 2 through  
4 4 of our statute.

10:33:50 5 There is a nuance distinction, if you will, between the  
6 decisions of the ICTY Appeals Chamber and the jurisprudence of  
7 our court, the Special Court, vis-a-vis the specificity of the  
8 crime that is aided and abetted. To put another way, is an aider  
9 and abettor required to aid a specific crime? That is, is the  
10:34:20 10 crime that is manifested by the actions of the principal a  
11 specific crime? It is a very, very delicate distinction, not  
12 otherwise noticeable, but we point it out for the record.

13 We maintain that whatever approach your Honours adopt the  
14 crime that is alleged Mr Taylor aids and abets has to be a crime  
10:34:44 15 within the statute and it has to be the crime behind which his  
16 act or omission provided a substantial effect.

17 Now, the CDF trial judgment at paragraph 229 citing ^  
18 Vasiljevic, the appeal judgment in that case of the ICTY Appeals  
19 Chamber, at paragraph 102, says the accused's act or mission  
10:35:17 20 should be specifically directed to have such a substantial effect  
21 and go to "certain specific crime". So this is the emphasis that  
22 the accused's conduct must go to a certain specific crime.

23 Let's look at some permutations in the evidence that may be  
24 deemed to be aiding and abetting. A witness said, at page 9444  
10:36:05 25 through 9447, that the RUF rebels got their ammunition via the  
26 NPFL. That is what this witness said. The RUF rebels got their  
27 ammunition via the NPFL. The time period for this acquisition of  
28 ammunition was given by the witness to be the period between 1991  
29 and 1996. RUF got their ammunition from the NPFL.



1           We assume for the sake of argument that there is some  
2 evidence elsewhere that suggests or confirms that Charles Taylor  
3 was head of the NPFL. The assumption here or the inference is  
4 that Charles Taylor was behind this provision of ammunition to  
10:37:11 5 the RUF. Let us set aside for the sake of argument that we  
6 should ignore the temporal requirements of the indictment, 1996  
7 November 30 through January 18, 2002, this is a problem for the  
8 Prosecution, but let's give them the benefit of the doubt, the  
9 question arises, if you believe that evidence, does this  
10:37:40 10 constitute aiding and abetting? Well, that evidence necessarily  
11 is not to be viewed in isolation. There is other evidence in the  
12 case that your Honours should consider, we propose.

13           There has been substantial evidence on the record that the  
14 border between Sierra Leone and Liberia was closed for a  
10:38:01 15 substantial period of time. Different witnesses have come before  
16 your Honours and have acknowledged this. Varmuyan Sherif, one of  
17 the first few Prosecution witnesses in January of 2008, said that  
18 between 1992 and 1996 ULIMO cut off the border between Liberia  
19 and Sierra Leone. The relevant part of the transcript for that  
10:38:37 20 assertion at page 976 through 977. It also appears at page 978,  
21 lines 7 through 11.

22           Another witness - indeed I see from my notes that it is the  
23 same witness - who said the RUF got this ammunition that  
24 subsequently confirms that this border was cut off by ULIMO  
10:39:19 25 between 1992 and 1996, and that is to be found at page 9445  
26 through page 9446.

27           The former President of Liberia, Moses Blah, was here and  
28 Moses Blah actually extends the period of the border closure  
29 through the elections in June of 1997. Moses Blah says that from

1 1992 until the elections in June of 1997 the border was cut off  
2 and the relevant page for the transcript there is page 10193.

3 So, let's re-examine that witness's evidence 1991 through  
4 1996 the RUF obtained their ammunition via the NPFL. The same  
10:40:19 5 witness says, "Oh, by the way, the border was closed between 1992  
6 and 1996." The former President of Liberia confirms the same.  
7 Another Prosecution witness confirms the same. Your Honours are  
8 asked and placed in a position to consider the capability of this  
9 evidence. The first version, if believed, does it amount to  
10:40:47 10 aiding and abetting? The second version, if believed, does it  
11 negate aiding and abetting? We submit that this type of evidence  
12 does not sustain the mode of liability aiding and abetting under  
13 Article 6.1 of the statute.

14 We have a witness saying - this is at page 3028 through  
10:41:31 15 3029 of the transcript - the witness says that Foday Sankoh went  
16 to Monrovia to get radios from Charles Taylor. Foday Sankoh went  
17 to Monrovia to get radios from Charles Taylor.

18 We set aside for the sake of argument the purpose for which  
19 the radios were being obtained. We accept for the purposes of  
10:42:04 20 argument that it was related to the conflict or to facilitate  
21 Foday Sankoh's actions in one way or another. We acknowledge for  
22 the sake of argument that it amounts to practical assistance but  
23 the question arises whether the provision of radios had a  
24 substantial effect on the perpetration of a crime punishable  
10:42:30 25 under the statute. The question arises to what crime does such  
26 evidence go. The question arises regarding the temporal  
27 requirement as pleaded in the indictment.

28 This witness, TF1-360, said this event took place in 1991.  
29 That does not fall within the parameters of the indictment.

1 Charles Taylor's actions, even if believed, in providing radios  
2 in no way had a substantial effect on the perpetration of any  
3 crime. That is our submission in this context.

4 Now, we have that same witness at page 3107 saying that in  
10:43:26 5 1998 Sam Bockarie bought arms and ammunition from Charles Taylor  
6 using money from Koidu Town. Page 3107. Sam Bockarie bought  
7 arms and ammunition from Charles Taylor using money from Koidu  
8 Town.

9 So we have a witness saying the arms and ammunition were  
10:44:01 10 purchased. We consider the evidence. We assume that if believed  
11 does it amount to aiding and abetting? But first you have to  
12 apply the standard of review regarding the elements of aiding and  
13 abetting. Arms and ammunition purchased. We don't know how much  
14 was paid for it, but we can set that aside for the sake of  
10:44:28 15 argument. Did those arms and ammunitions have a substantial  
16 effect? They could have in perpetration of some crime, but was  
17 the crime perpetrated one punishable under the statute? Did they  
18 have that substantial effect? When Mr Taylor allegedly gave  
19 these arms and ammunition in exchange for money, was his mens rea  
10:44:53 20 such that his actions, his act or omission, was specifically  
21 directed at a certain specific crime? Recurringly through the  
22 evidence your Honours will find this type of allegation.

23 Another witness said Charles Taylor gave the witness \$2,000  
24 and a car. This is at page 11509 and also at 11511 and it is  
10:45:29 25 said to happen in 1999. The President of Liberia, sitting in an  
26 office, gives one witness \$2,000 and a car in 1999. Is that  
27 aiding and abetting? Does that have a substantial effect on the  
28 perpetration of a crime? Is it perhaps a goodwill gesture, a  
29 gesture of friendship? We are assuming for the sake of argument

1 that these things happened, since we are not allowed to comment  
2 on the credibility or reliability of these witnesses. We submit  
3 that such evidence does not amount or is not sufficient to  
4 validate the mode of liability of aiding and abetting.

10:46:28 5 We take another item of evidence. At page 8918 through  
6 page - 8918 and also at page 8020 - we have a witness saying that  
7 around June of 1998 Sam Bockarie received information from  
8 Charles Taylor that the 448 ECOMOG jet was on its way to attack  
9 positions in Koidu Town. The witness says that this information  
10:47:07 10 only came from Liberia. Charles Taylor received information -  
11 Sam Bockarie received information from Charles Taylor that the  
12 448 ECOMOG jet was on its way to attack positions in Koidu.

13 Does that amount to aiding and abetting on its face? Does  
14 it amount to practical assistance, encouragement, support? We  
10:47:38 15 submit that it does not. Why? Because there is other evidence  
16 on the record in respect of the 448 notifications that suggests  
17 that while they may have come from Liberia they did not come from  
18 Charles Taylor directly. While they may have come from Liberia I  
19 recall the evidence being that it was somebody at Roberts  
10:48:19 20 International Airfield, and we are assuming that this is to be  
21 believed at this point, who would alert the fighters in Koidu  
22 that the 448 jets were coming, but this witness alleges it comes  
23 from Charles Taylor.

24 We submit that the giving of this information by Charles  
10:48:42 25 Taylor has to have behind it a specific direction at a certain  
26 crime. This is the whole nuance distinction about aiding and  
27 abetting. You provide this assistance, encouragement, but you  
28 direct it specifically at a certain crime. What was the crime in  
29 question in this example, June 1998? This witness incidentally

1 does not say the basis or his basis for this information, but  
2 that comes quite close to assessing his reliability and  
3 credibility and so I will not delve further into it.

4 Now this same witness, the witness who just spoke of  
10:50:03 5 Sam Bockarie being alerted about the 448 jets, the witness said  
6 at page 8402 and 8403, that possibly in August or September of  
7 1998, before the Kono invasion, a commander went to Liberia for  
8 reinforcements. Charles Taylor reorganised a bigger group, armed  
9 them and sent them to Sam Bockarie to reinforce the junta troops  
10:50:46 10 in Freetown. The reference here is to the 6 January invasion of  
11 Freetown.

12 Now, what do we know about that invasion? There are a few  
13 things that are worth noting. When your Honour considers this  
14 witness's evidence, it is also appropriate to consider the  
10:51:22 15 evidence provided by TF1-360 at page 3383. That witness said  
16 that SAJ Musa, the SLA or AFRC, acted completely on his own and  
17 without authority from Sam Bockarie in attacking Freetown. The  
18 witness acknowledged that Sam Bockarie had no idea where SAJ  
19 Musa's group was. The majority decided to disobey Sam Bockarie's  
10:52:06 20 orders not to go into Freetown.

21 So we have another Prosecution witness saying that  
22 Sam Bockarie had no idea where the troops that attacked or  
23 invaded Freetown were, that SAJ Musa acted completely on his own  
24 in invading Freetown, and yet we have another Prosecution witness  
10:52:37 25 saying that Charles Taylor reorganised a bigger group, armed them  
26 and sent them to Sam Bockarie to reinforce the junta troops in  
27 Freetown.

28 Do we know whether these troops that Charles Taylor  
29 allegedly armed and reorganised made their way into Freetown

1 vis-a-vis through Sam Bockarie? We suggest that the evidence on  
2 the record shows the contrary.

3 In respect of the Freetown invasion your Honours have  
4 already determined as an adjudicated fact in this case that the  
10:53:24 5 RUF troops played little or no role in this invasion. I am  
6 referring to the recently issued decision on 23 March this year.  
7 Indeed, I should cite the relevant portions of that decision.

8 One of the facts that were adjudicated is adjudicated fact  
9 number 15 which says, "Following heavy assaults from ECOMOG, the  
10:54:05 10 troops were forced to retreat from Freetown. This failure marked  
11 the end of the AFRC offensive as the troops were running out of  
12 ammunition." We pause there. The troops in Freetown were  
13 running out of ammunition.

14 Another witness says Charles Taylor had sent ammunition to  
10:54:26 15 Sam Bockarie. Your Honours have as an adjudicated fact the  
16 troops in Freetown were AFRC. I continue reading adjudicated  
17 fact 15:

18 "While the AFRC managed a controlled retreat engaging  
19 ECOMOG and Kamajor troops who were blocking their way, RUF  
10:54:48 20 reinforcements arrived in Waterloo. However, the RUF troops were  
21 either unwilling or unable to provide the necessary support to  
22 the AFRC troops."

23 The law requires that Charles Taylor aid and abet a certain  
24 specific crime. What is the crime at issue vis-a-vis this  
10:55:12 25 alleged armament and reorganisation of a group of soldiers? The  
26 soldiers apparently did not make it into Freetown. At least we  
27 submit that the Prosecution has not rebutted the presumption that  
28 an adjudicated fact is entitled to under these circumstances, so  
29 how can it be said that this allegation amounts to aiding and

1 abetting?

2 Adjudicated fact number 1 makes the point that, "As the  
3 founders of the AFRC belonged to the Sierra Leone Army and  
4 therefore had been fighting the RUF since 1991, the coalition  
10:56:00 5 between the two factions, following the 1997 coup, was not based  
6 on long-standing common interests. Both factions officially  
7 declared that they were joining forces to bring peace and  
8 political stability to Sierra Leone."

9 Let's pause there. The coalition between the two factions  
10:56:24 10 was not based on long-standing common interests. That signifies  
11 that these were two separate armed groups. Other evidence  
12 adduced confirms that it was the AFRC who went into Freetown.  
13 The adjudicated fact and other evidence confirmed that the RUF  
14 troops never made it past Waterloo.

10:56:51 15 So what is the specific crime that Charles Taylor is said  
16 to have aided and abetted in the context of the 6 January  
17 invasion of Freetown? It is the case that there are parts of the  
18 indictment that suggest that Charles Taylor would equally be  
19 responsible for the actions of the AFRC. The problem that the  
10:57:22 20 Prosecution has is that the evidence connecting Charles Taylor to  
21 the AFRC is extremely limited in this case, very tangential at  
22 best.

23 One witness spoke of a meeting in Liberia - and this is at  
24 page 8504 and 8506 - a meeting in Liberia with Johnny Paul  
10:58:03 25 Koroma, Daniel Chea, the defence minister for Charles Taylor, 11  
26 other AFRC troops including the witness, where President Taylor  
27 said he had mobilised most of the SLAs who had come to Liberia  
28 and sent them back as reinforcements with arms, ammunition and  
29 food and that he continued to do so until the ceasefire.

1           The witness adds that Charles Taylor was unhappy that there  
2 was about to be a division, meaning a division between the RUF  
3 and the AFRC. The supplies were sent to the RUF and the AFRC -  
4 the arms, the ammunition and the food. Charles Taylor warned  
10:59:02 5 them that a division would result in imprisonment because the  
6 politicians would use them, saying something to the effect that  
7 their main focus should be the presidency, that that was what  
8 they should be fighting for, that the assistance was given so  
9 that the government of President Ahmad Tejan Kabbah could be  
10:59:30 10 removed. This is what the witness testified to.

11           Let's consider that for a second. This meeting in Monrovia  
12 is said to take place in May of 1998. Let's consider what the  
13 same witness says later on before the same judges in the same  
14 courtroom in the same witness chair. At page 8638 line 6,  
11:00:05 15 through 8639 line 26, the witness acknowledged that he was not  
16 aware whether Johnny Paul Koroma ever went to Monrovia between 25  
17 May 1997 and August 1999. 25 May, when the junta took over  
18 power, 1997 and August 1999. The same witness that said in May  
19 of 1998 this meeting took place in Monrovia between Johnny Paul  
11:00:46 20 Koroma and Charles Taylor.

21           The same witness acknowledged at page 8638, line 6 through  
22 12, that he was not aware of any trade in diamonds for arms and  
23 ammunition between Johnny Paul Koroma and President Charles  
24 Taylor. On its face, the alleged reorganisation and mobilisation  
11:01:17 25 of SLA troops, sending them back as reinforcements, providing  
26 arms, ammunition and food, as alleged, if believed, would  
27 constitute aiding and abetting, but when you delve slightly  
28 further and you consider the same witness's evidence, not to  
29 mention the evidence of other witnesses, you find that if



1 believed the two cannot stand. One must be right and the other  
2 must be dismissed. This is the sort of analytical approach we  
3 respectfully submit the chamber would have to undertake in  
4 looking at the applicable modes of liability.

11:02:05 5 There is another point that should be made about aiding and  
6 abetting and the law, as pronounced by our Appeals Chamber, is  
7 that words of moral support and encouragement to fighters about  
8 to go on military operations, or blessings, an affirmation or  
9 confirmation that their actions are appropriate, or the provision  
11:02:35 10 of medicine which the soldiers believe might protect them, does  
11 not constitute aiding and abetting. This is from the Fofana and  
12 Kondewa appeals judgment 28 May 2008 at paragraph 110. The  
13 Appeals Chamber upheld the CDF trial judgment at paragraph 799  
14 and 800. That is important. Words of encouragement; words of  
11:03:13 15 moral support; blessings; provision of medicine.

16 Your Honours will recall a witness, I believe it is  
17 TF1-584, there were one or two of those, and also perhaps TF1-516  
18 if memory serves me, those two witnesses spoke of herbalists - I  
19 am quite certain 584 did speak of herbalists perhaps not so 561,  
11:03:40 20 but I stand to be corrected. They spoke about herbalists sent by  
21 Charles Taylor, local medicine men, who were going to arm all the  
22 troops with their native medicine to give them protection. That  
23 is not the sort of evidence the law allows your Honours to  
24 consider in the context of aiding and abetting. And so we submit  
11:04:04 25 that your Honours consider the applicable legal principles, apply  
26 the mens rea elements, which I should add one more permutation of  
27 the mens rea element because it is important to this case. The  
28 law requires that the aider and abetter should be aware of the  
29 principal's mens rea, the principal, the person who perpetrates

1 the offence, so Charles Taylor must be aware of the intent level  
2 of the perpetrator, the person on the ground who does the offence  
3 when he aids and abets and your Honours know that the mens rea  
4 element attaches at the moment the crime is committed. What was  
11:04:55 5 Charles Taylor's state of mind at the time of the aiding and  
6 abetting?

7 And then there is the subsidiary but relevant question of  
8 what was the principal or perpetrator's state of mind? Charles  
9 Taylor must be aware of their mens rea. The relevant citation  
11:05:13 10 for that, there are several cases, CDF trial judgment at  
11 paragraph 231, the Aleksovski appeal judgment from the ICTY  
12 Appeals Chamber at paragraph 162, the Furundzija trial judgment  
13 of the ICTY at paragraph 245, the Limaj trial judgment at  
14 paragraph 518, the Brdani n trial judgment at paragraph 273 and  
11:05:54 15 then we have the ICTR Appeals Chamber in Ntakirutimana at  
16 paragraph 500 embracing the same principle.

17 This is important because the evidence the Prosecution  
18 presents must show, in the context of a completed offence, that  
19 Charles Taylor was aware of the mens rea of the perpetrator, so  
11:06:24 20 you have to examine the mens rea of the perpetrator, did they  
21 have the requisite mens rea for the resulting offence? Was that  
22 offence an offence to be found in Articles 2, 3, 4 of the statute  
23 and did Charles Taylor have an awareness of the perpetrator's  
24 mens rea?

11:06:43 25 I made the point previously, and I was looking for my  
26 citation about there being a nuance distinction between the mens  
27 rea element for aiding and abetting in the ICTY jurisprudence  
28 versus our jurisprudence, that is the degree of specificity of  
29 the resulting crime, and I would like to provide the citation for

1 that. The relevant ICTY cases would be Aleksovski, the appeals  
2 judgment at paragraph 162, the Krnojelac appeals judgment at  
3 paragraph 51 and the Brdaniin appeal judgment at paragraph 484.

4 And now the last mode of liability under Article 6.1, joint  
11:07:38 5 criminal enterprise. I need to make some preliminary remarks  
6 about this. We all know pending sub judice before the Appeals  
7 Chamber is an appeal on this issue: that issue deals with the  
8 specificity of the pleading of joint criminal enterprise.

9 As we stand here today until a decision is rendered we are  
11:08:01 10 bound by your Honours' majority decision with respect to that  
11 issue issued on 27 February this year. We will not address  
12 issues going to the specificity of the pleading of joint criminal  
13 enterprise in the context of a Rule 98 application. Indeed, it  
14 is inappropriate to do so. But nonetheless we are obligated  
11:08:26 15 under the circumstances to comment on the sufficiency or  
16 insufficiency of the Prosecution's evidence assuming arguendo,  
17 for the sake of argument, joint criminal enterprise or JCE as we  
18 prefer to call it has been sufficiently pleaded in the second  
19 amended indictment.

11:08:48 20 That involves, in our submission, considering all  
21 permutations of common purposes or plans that are possible on the  
22 record. Just so that we are on safer ground. And so we will  
23 proceed with caution, but we emphasise in particular that by  
24 virtue of commenting on this mode of liability we in no way,  
11:09:13 25 shape or form wish to contradict any arrangements we have made in  
26 our appeals applications, in our notice of appeal and  
27 submissions, and our submissions today should not be viewed as  
28 constituting a waiver of any of the five grounds of appeal or  
29 arguments made in that submission.

1 Joint criminal enterprise. This is in our view the back  
2 bone of this case. This is what this case amounts to. Whether  
3 Charles Taylor participated in a criminal enterprise. What was  
4 the common purpose, plan, design of that enterprise? Did his  
11:09:55 5 participation in this enterprise occur at a time when a crime  
6 committed within the jurisdiction of the Court occurred in Sierra  
7 Leone?

8 Your Honours will remember that the Prosecutor - well, the  
9 case summary in this case makes clear and I believe Chief  
11:10:14 10 Prosecutor Rapp said it in his opening statements, indeed he did  
11 say it, all of the crimes alleged in this case took place in  
12 Sierra Leone, so all of the evidence you heard about Charles  
13 Taylor, I recall it was Zigzag Marzah who said he ordered them to  
14 slit open a pregnant woman's stomach in Liberia, all of that has  
11:10:36 15 no bearing on this case. The fact of the matter is anything  
16 involving Liberia and alleged acts undertaken by Mr Taylor have  
17 to be set aside. They are inapplicable for purposes of our  
18 consideration.

19 And so we are considering crimes occurring in Sierra Leone  
11:10:57 20 in furtherance of this joint criminal enterprise. Well, let's  
21 look at the law regarding joint criminal enterprise. The actus  
22 reus your Honours are well aware of it. In fact you have  
23 delineated it in several decisions, but we draw mostly from  
24 Tadic, the Appeals Chamber decision there. You require plurality  
11:11:24 25 of persons, more than one persons. They have to have a common  
26 plan, design or purpose that amounts to or involves the  
27 commission of a crime that is provided for in the statute, and  
28 then the accused must participate in this common plan, design or  
29 purpose that involves the perpetration of this crime, and we will

1 just cite Tadic, paragraph 227.

2 In Tadic they delineate several customary international law  
3 cases where this principle derives from and there is a fair  
4 amount of consensus about the different categories of JCE. There  
11:12:19 5 is the first category, I don't believe Tadic uses the word "basic  
6 form", but nonetheless other cases have used this language. The  
7 basic form or the what you will call the first category involves  
8 co-perpetration cases, where there is a shared intent among the  
9 co-conspirators, or participants in the common design to  
11:12:44 10 perpetrate a certain crime.

11 So you have the first category, shared intent,  
12 co-perpetrator cases. Does that apply to this case? For the  
13 sake of argument, not waiving our rights to appeal, yes. It  
14 could be said that, as your Honours have found, it is to be found  
11:13:05 15 in paragraph 33 of the indictment. I wonder if the court officer  
16 could show paragraph 33 of the indictment.

17 MS IRURA: Your Honour, the document is on the screen.

18 MR ANYAH: I see that. I do not have my - I was on  
19 LiveNote and not on the document cam. Yes, thank you, Madam  
11:13:29 20 Court Officer. Paragraph 33 of the indictment and I am focused  
21 on the last two sentences. You have the word, "The accused" and  
22 then you have after it "otherwise aided and abetted". We have  
23 just considered aiding and abetting. Then there is the  
24 disjunctive "or" "of which crimes amounted to or were involved  
11:13:56 25 within a common plan, design or purpose in which the accused  
26 participated, or which were a reasonably foreseeable consequence  
27 of such common plan, design or purpose."

28 The first phrase there, "which crimes amounted to or were  
29 involved within a common plan, design or purpose in which the

1 accused participated", most would invariably agree that that is  
2 the basic form or first category or co-perpetration modality of  
3 aiding and abetting - of joint criminal enterprise.

11:14:44 4 The last sentence there, "Or were a reasonably foreseeable  
5 consequence of such common plan, design or purpose", most would  
6 agree constitutes what some have termed the extended form or the  
7 third category of joint criminal enterprise.

8 The third category we will discuss a little bit later,  
9 because there is a second category which doesn't appear to be  
11:15:07 10 applicable in this case and that category generally is a variant  
11 of the first category. It involves often times co-perpetration.  
12 It involves or derives mostly from concentration camp cases where  
13 there is a system of ill-treatment against the detainees and that  
14 clearly does not apply to the facts of this case.

11:15:33 15 So we assume for the sake of argument that the first or  
16 basic form and the third or extended form of JCE apply to our  
17 case. What are the elements vis-a-vis the actus reus and the  
18 mens rea? I have gone through the actus reus. We will consider  
19 each of those vis-a-vis the evidence that has been presented.

11:16:00 20 The mens rea element or the subjective element of the first  
21 category. The law requires that they have shared intent to  
22 perpetrate a certain crime and one or more of them, of the  
23 co-perpetrators, actually perpetrate the crime with the requisite  
24 intent for the crime that is perpetrated. And we cite Tadic in  
11:16:26 25 support of that, paragraphs 228 and 220.

26 With respect to the third category, or extended form, the  
27 requisite mens rea, Mr Taylor has to have the intention to take  
28 part or participate in a joint criminal enterprise and to further  
29 the criminal purposes of that enterprise or group, either

1 individually or jointly or in concert with others.

2 In addition, he has to contribute to the joint criminal  
3 enterprise and to the extent a crime which is foreseeable takes  
4 place, that is to the extent a crime that is foreseeable from the  
11:17:20 5 activities of this joint criminal enterprise takes place, in  
6 order to be called culpable the accused must willingly take the  
7 risk that such a foreseeable crime might occur; The  
8 foreseeability of the possible commission by other members of the  
9 group of offences that do not constitute the object of the common  
11:17:46 10 criminal purpose. This is at paragraph 220 of Tadic. So those  
11 are the, broadly speaking, the constituent elements of joint  
12 criminal enterprise, the actus reus and the mens rea.

13 A preliminary observation. There is often confusion about  
14 whether it should be referred to as a common purpose, whether it  
11:18:09 15 should be referred to as a common plan, whether it should be  
16 referred to as a common design. This is merely a matter of  
17 nomenclature. Different Appeals Chambers in our submission will  
18 select the appropriate terminology depending on the particular  
19 facts of their case or the case before them.

11:18:29 20 In the AFRC appeals judgment the preference that was  
21 adopted was the language of common purpose. Tadic, the appeals  
22 judgment at paragraph 228, in that same paragraph uses the phrase  
23 "common design". Later in the third paragraph it uses the phrase  
24 "common plan". In paragraph 220, Tadic uses the phrase "common  
11:18:56 25 purpose" and "common plan" and in paragraph 229 it speaks of "a  
26 common purpose or design". Whatever you wish to call it, common  
27 plan, common purpose, common design, all of this derives from the  
28 old conspiracy mode of accomplice liability and that is a  
29 domestic law term, but I think most people understand the import

1 of it, legally speaking. The bottom line is that these people  
2 who engage in a joint criminal enterprise must have a plan. They  
3 must have a purpose.

4 Well, let us consider in the first instance some of the  
11:19:40 5 Prosecution's suggested purposes or suggested common plans. The  
6 Chief Prosecutor, Mr Stephen Rapp, spoke to your Honours on 4  
7 June 2007 in his opening statement, and the Chief Prosecutor said  
8 - and I will read it. This is from page 30 of the transcript of  
9 4 June 2007, at lines 8 through 15. Prosecutor Rapp said:

11:20:27 10 "The witnesses that we will call and the documents that we  
11 will present will prove that the accused is responsible for the  
12 development and execution of a plan that caused the death and  
13 destruction in Sierra Leone. That plan, formulated by the  
14 accused and others, was to take political and physical control of  
11:21:00 15 Sierra Leone in order to exploit its abundant natural resources  
16 and to establish a friendly or subordinate government there to  
17 facilitate that exploitation."

18 Mr Taylor formulated this plan, he and others, to take  
19 political and physical control of Sierra Leone, exploit its  
11:21:31 20 natural resources, install a friendly or subordinate government  
21 there. The Prosecution's opening - this is the road map that  
22 sets us on the course during the trial. In the case summary  
23 filed by the Prosecution shortly after the opening, the case  
24 summary was filed on 3 August 2007, the Prosecution elaborates to  
11:22:07 25 some degree about this meeting of the minds or members of this  
26 joint criminal enterprise.

27 The case summary, I do not have a copy to be displayed but  
28 I will read from the document. I don't know if the Court Manager  
29 - if the courtroom officer has a copy that could be displayed.



1 Paragraph 1 of the case summary - and when I say case summary, I  
2 of course mean the second - I mean the amended case summary  
3 accompanying the second amended indictment.

4 Paragraph 1 says that:

11:22:45 5 "In the late 1980s the accused received military training  
6 in Libya from representatives of the government of Muammar  
7 al-Qaddafi. While in Libya the accused met Foday Saybana  
8 Sankoh."

9 Pause there and now an important phrase, or important  
11:23:10 10 sentence, "The two made common cause to assist each other in  
11 taking power in their respective countries."

12 So we have Charles Taylor and Foday Sankoh meeting in Libya  
13 while receiving training from representatives of Colonel Muammar  
14 Gaddafi and the two made common cause. And what is the common  
11:23:40 15 cause about? To assist each other in taking power in their  
16 respective countries.

17 Paragraph 3, "In December 1989 the NPFL, led by the  
18 accused, began conducting organised armed attacks in Liberia.  
19 The accused and the NPFL were assisted in these attacks by Foday  
11:24:07 20 Saybana Sankoh and his followers."

21 Pause there. We submit - and this is a digression - I will  
22 come back to the core issues of joint criminal enterprise, but  
23 this is related, there is little or no evidence on the record  
24 before your Honours that Foday Sankoh provided any sort of  
11:24:30 25 assistance to Charles Taylor, militarily, monetarily or in any  
26 other way, shape or form. In Charles Taylor's armed insurrection  
27 in Liberia, starting on 24 December 1998, there is little or no  
28 evidence to that effect. 1989. Thank you, Mr Taylor.

29 That raises an interesting question. We are not

1 suggesting, mind you, that there is a legal requirement that  
2 there must be a quid pro quo in a joint criminal enterprise. We  
3 wouldn't pass on that issue. But in a question that necessarily  
4 begs for an answer is, if two people agree on something and the  
11:25:20 5 Prosecutor says they made a common cause to assist each other in  
6 taking power in their respective countries, what did Foday Sankoh  
7 do for Charles Taylor?

8           Witness after witness has been brought by the Prosecution  
9 to say that Charles Taylor was funneling arms and ammunition to  
11:25:45 10 the RUF; that at Camp Naama members of the RUF were trained.  
11 Well, we have heard that Foday Sankoh trained several radio  
12 operators. We know Foday Sankoh was a radio man - a  
13 communications man - from the evidence. What did he do for  
14 Charles Taylor? Did he train any of Charles Taylor's NPFL  
11:26:08 15 fighters? Is there evidence of Foday Sankoh giving Charles  
16 Taylor money? Is there evidence of Foday Sankoh sending arms or  
17 ammunition to assist Charles Taylor? None. It has been a  
18 one-way flow, if you will, of alleged assistance from Charles  
19 Taylor to Foday Sankoh.

11:26:39 20           The case summary continuing at paragraph 42, page 10, it  
21 reads:

22           "Between about 1988 and about 18 January 2008 - 18 January  
23 2002, the accused and others agreed upon and participated in a  
24 common plan, design or purpose to carry out a criminal campaign  
11:27:30 25 of terror, as charged in the second amended indictment, in order  
26 to pillage the resources of Sierra Leone, in particular the  
27 diamonds, and to forcibly control the population and territory of  
28 Sierra Leone."

29           Pause there. This is different than what is said in

1 paragraph 1 about a common cause between Foday Sankoh and Charles  
2 Taylor to assist each other in taking power in their respective  
3 countries. This sounds more like what the Chief Prosecutor said  
4 on 4 June 2007 regarding the usurpation of the resources of  
5 Sierra Leone.

11:28:24

6 Let's assume for the sake of argument that both constitute  
7 a common plan, taking over power in Sierra Leone, depleting the  
8 resources, installing a friendly government in Sierra Leone, are  
9 those crimes punishable in Articles 2 through 4 of the statute?

11:28:41

10 We submit they are not.

11 If we assume for the sake of argument that one common  
12 purpose was to install each other as presidents of their  
13 respective countries, that is not a crime within Articles 2, 3, 4  
14 of the statute. Let's assume that diamonds was what they were  
15 interested in, and they wanted to pillage the resources of Sierra  
16 Leone, we submit that that was not a crime, or that is not a  
17 crime within Articles 2, 3, 4 of the statute. And so a question  
18 arises as to what evidence could possibly be led in respect of  
19 something that is not criminal?

11:29:05

20 If one of the constituent elements of the actus reus of a  
21 joint criminal enterprise, a common plan, design or purpose, and  
22 the alleged common plan, design or purpose is not criminal, no  
23 amount of evidence can turn it into a crime. So in that respect,  
24 again proceeding for the sake of argument that JCE has been  
25 sufficiently pleaded, either common purpose fails.

11:29:55

26 PRESIDING JUDGE: Mr Anyah, we don't want to miss any of  
27 your submissions from the record, and I have just been given  
28 notice that the tape is just about finished. So this may be a  
29 good time to take the morning break.

1 MR ANYAH: Yes.

2 PRESIDING JUDGE: We will resume again at 12 o'clock.

3 MR ANYAH: Thank you, your Honour.

4 PRESIDING JUDGE: Thank you.

11:30:26 5 [Break taken at 11.30 a.m.]

6 [Upon resuming at 12.00 p.m.]

7 PRESIDING JUDGE: Continue, Mr Anyah.

8 MR ANYAH: Thank you, Mr President. I think before the  
9 break we were still considering the Prosecution's amended case  
10 summary in this case and I would like to pick up where we left  
11 off.

12 Paragraph 42 was where I believe we were and what is  
13 interesting about this paragraph, in addition to providing what  
14 is arguably a further explication of what the alleged common  
15 purpose of this joint criminal enterprise was, the beginning  
16 phrase of this paragraph which reads, "Between about 1988 and  
17 about 18 January 2002" is instructive, it is important, because  
18 your Honours will recall that one of the aspects or component of  
19 a joint criminal enterprise is temporal in nature. For how long  
12:03:29 20 and during what time period did the joint criminal enterprise  
21 exist?

22 So we have an indictment who - which in sum and substance  
23 has alleged that the events took place between 30 November 1996  
24 and 18 January 2002 - I mean the crimes, that is, took place in  
12:03:55 25 that window. And we have a case summary amplifying the  
26 indictment by saying or suggesting, both in paragraph 1, when it  
27 speaks of the Libyan meeting between Sankoh and Taylor in the  
28 late 1980s, and in paragraph 42 where it speaks of 1988, that  
29 this criminal enterprise or part of its constituent elements

1 began their manifestation as far back as 1988.

2 This window, if you will, between 1988 and 2002 is  
3 reinforced in paragraph 44 on the same page, 44.1. Incidentally,  
4 there is no paragraph 44 in the Prosecution's amended case  
12:04:50 5 summary. Paragraph 44.1 alleges or suggests:

6 "Others participated in the common plan, design or purpose  
7 during various periods, including:

8 (a) Foday Saybana Sankoh who participated between about  
9 1988 and January 2002."

12:05:16 10 On page 11, subsection (b) of paragraph 44.1:

11 "Other commanders and other leaders of the RUF from about  
12 1990 until about 18 January 2002;

13 (c) other commanders and leaders of the NPFL from about  
14 1988 until about 18 January 2002."

12:05:50 15 And on and on and on. Interestingly in subsection (e),  
16 when it speaks of the AFRC, it says, "Commanders and others of  
17 the AFRC who agreed to and commenced participation in the common  
18 plan on or about 28 May 1997 through about May 2000."

19 Pause there. This suggests the commanders of the AFRC,  
12:06:23 20 when they overthrew the government of President Tejan Kabbah on  
21 25 May 1997, were perhaps not acting in furtherance of a common  
22 plan, design or purpose within the meaning of joint criminal  
23 enterprise as a mode of liability.

24 If the Prosecutor is telling us that their participation  
12:06:43 25 commenced in earnest on 28 May 1997 then at the time President  
26 Kabbah was overthrown on 25 May they, for all practical and  
27 intents and purposes, at least what we can deduce from reading  
28 the case summary, were not participants in any common plan in  
29 conjunction with Charles Taylor and/or Foday Saybana Sankoh.

1           And then we have in subsection (g), "Associates of the  
2 accused who worked under his direction or in cooperation with him  
3 to further the common plan from about 1988 until about 18 January  
4 2002."

12:07:34 5           Now, we have discussed two possible permutations of the  
6 common plan. Paragraph 44.3, the last sentence is important.  
7 The paragraph reads: "At times during the armed conflict there  
8 were lulls in active hostilities."

9           However, from its inception until the end of the armed  
12:07:59 10 conflict in Sierra Leone on or about 18 January 2002, the common  
11 plan as described in paragraphs 42 and 43 above remained the  
12 same. So the Prosecution is telling us in the amended case  
13 summary that this common plan did not change. This common plan  
14 that spans from 1988 until 2002 did not change.

12:08:35 15           The alleged meeting of the minds that Charles Taylor had  
16 with Foday Sankoh in 1998 its sum and substance, its core, its  
17 purpose, did not change. There were no mutations between 1988  
18 and 2002. That means the evidence should bear this out.  
19 Assuming for the sake of argument that whatever common plan they  
12:09:02 20 have alleged is a crime, then the evidence must bear out that the  
21 common plan remained one and the same, assuming in the first  
22 instance there was a common plan.

23           Let us consider some of the evidence that has been  
24 presented. Generally, we know Foday Sankoh was imprisoned, as I  
12:09:28 25 have mentioned previously from 1997, I believe the evidence is  
26 March 1997, until his release to attend the Lome Peace Accord on  
27 or about in April of 1999.

28           There has been evidence that Foday Sankoh and Sam Bockarie  
29 had a dispute while Foday Sankoh was in custody. The leader of

1 the RUF, the evidence suggests or confirms, was in prison. He is  
2 the one with whom it is alleged Charles Taylor had this meeting  
3 of the minds. What evidence is there to suggest that Charles  
4 Taylor and Sam Bockarie, who assumed the leadership of the RUF,  
12:10:21 5 had a meeting of the minds amounting to the same common purpose  
6 that Charles Taylor had with Foday Sankoh?

7 Evidence confirms that after Sam Bockarie departed for  
8 Monrovia on or about 14 December 1999, at some point thereafter  
9 Issa Sesay took over the leadership of the RUF. That being the  
12:10:48 10 case, one has to review the record to find out what evidence  
11 suggests that there was a meeting of the minds, that Issa Sesay  
12 and Charles Taylor were both participants in this common plan,  
13 that the plan that existed between Charles Taylor and Foday  
14 Sankoh, starting as alleged from 1998, manifested itself or as  
12:11:13 15 alleged from 1988 manifested itself in the relationship, if any,  
16 between Charles Taylor and Issa Sesay. All we are doing, your  
17 Honours, is applying what the law requires, guided by the  
18 delineations and scope that the Prosecution has pleaded in the  
19 indictment.

12:11:41 20 Let us consider the 6 January invasion of Freetown. The  
21 Chief Prosecutor in his opening statement said - and this is the  
22 transcript of 4 June 2004, starting at page 69 at line 6 - "The  
23 accused's responsibility for the events of 6 January and its  
24 aftermath will be established through Prosecution witnesses who  
12:12:13 25 testify to the following facts", and then he goes on to comment  
26 and I will just --

27 PRESIDING JUDGE: Just to correct the record, did you say  
28 the transcript of the 4 June 2004?

29 MR ANYAH: If I did I meant 2007, but I believe I said

1 2007.

2 PRESIDING JUDGE: Well the written record has 2004, but it  
3 is now corrected anyway.

12:12:48

4 MR ANYAH: Justice Sebutinde says I said 2004 so I withdraw  
5 my explanation.

12:13:22

6 Now the Chief Prosecutor about 6 January, he told this  
7 Court, he said Sam Bockarie was the spokesman for the invading  
8 forces. Communications between Sam Bockarie and Alex Tamba Brima  
9 continued during the invasion. RUF fighters and some Liberian  
10 fighters sent by the accused weeks before the invasion reinforced  
11 the fighters of Alex Brima and enhanced the military strength of  
12 the forces." In the earlier session this morning we have  
13 considered evidence that suggests otherwise, that the RUF never  
14 made it past Waterloo and we stand by the citations made there.

12:13:49

15 Chief Prosecutor suggested that the invasion was the  
16 culmination of years of assistance by the accused towards the  
17 common plan to take over the political control of Sierra Leone.  
18 Here he says the common plan to take over the political control  
19 of Sierra Leone. The phraseology about pillaging the resources  
20 that appears in paragraph 42 of the case summary, in order to  
21 pillage the resources is not mentioned in the context of 6  
22 January or the common plan, design or purpose to carry out a  
23 criminal campaign of terror is not necessarily mentioned at this  
24 point by the Chief Prosecutor.

12:14:22

12:14:51

25 He suggests that towards the end of the period of extreme  
26 violence Charles Taylor called Sam Bockarie to Monrovia and  
27 promoted him. There has been evidence we acknowledge, although  
28 we can't comment on its reliability or credibility, there has  
29 been evidence of an alleged promotion of Sam Bockarie to general



1 by Charles Taylor.

2 He says a few months after the invasion somewhere in  
3 mid-1999 Charles Taylor hosted JPK, Johnny Paul Koroma, and some  
4 senior leaders of the AFRC in Monrovia and gave them \$15,000 as a  
12:15:33 5 show of support.

6 Joint criminal enterprise requires in its first permutation  
7 a shared criminal intent of all the co-perpetrators. That means  
8 Charles Taylor's intent must be the same as Sam Bockarie; it must  
9 be the same as Alex Tamba Brima; it must be the same as SAJ Musa.  
12:16:03 10 They must have a shared criminal intent and then one of them  
11 commits an offence punishable under the statute.

12 There has been evidence before this Court to suggest that  
13 as far as the AFRC was concerned the purpose - the primary  
14 purpose if you will - in furtherance of SAJ Musa's invasion of  
12:16:37 15 Freetown was to restore the Sierra Leone Army. There has been  
16 evidence about this. I have commented on the AFRC acting  
17 essentially alone in this invasion.

18 If the persons who went into Freetown acted with a  
19 different intent, or acted with a different purpose, how can it  
12:17:10 20 be said that Charles Taylor is criminally responsible? The  
21 Prosecution is obligated to plead a change in the common purpose  
22 or plan if one in fact materialises. There are cases where a  
23 group of co-perpetrators start out with one intent and whatever  
24 their ultimate objective is along the course of the way it  
12:17:34 25 changes. It happens all the time in criminal cases. But the  
26 Defence cannot guess at what this change is. The Prosecution has  
27 to lead evidence about the changed purposes and here you have the  
28 actual forces who go into Freetown on the Prosecution's own  
29 evidence before this Court, witnesses called by them, some saying

1 that re-establishing or reinstating the Sierra Leone Army was the  
2 main reason behind this.

3 Now, there has been evidence also of SAJ Musa and what he  
4 instructed his fighters to do or not do during the invasion.

12:18:27 5 This comes from a witness at page 9015 through 9018 of the  
6 transcript. The witness says in Colonel Eddie Town his group met  
7 with SAJ Musa and SAJ Musa ordered them to go to Freetown and  
8 overthrow the government without killing, looting and burning  
9 houses. This is the Prosecution's own evidence. So on the one  
12:19:00 10 hand the standard of review for Rule 98 asks you to believe this  
11 evidence, including what I have just read. On the other hand it  
12 asks you to believe the alleged involvement of Charles Taylor in  
13 the 6 January invasion. But the two cannot stand. The two  
14 cannot be capable of supporting a conviction. They are  
12:19:26 15 contradictory. And this is where the application of the legal  
16 principles to the facts becomes important.

17 What other evidence has there been about this issue, this  
18 continuing common plan or purpose? We have a witness who  
19 testified that in 1999 - and this is at pages 11525 and 11528 -  
12:20:06 20 that the transcripts, if you will, of meetings were recorded and  
21 the recording was given to Charles Taylor. This suggests that he  
22 was informed or kept abreast of what was going on in Sierra  
23 Leone.

24 The witness adds at page - rather another witness, I am  
12:20:29 25 sorry, adds at page 4366 that radio reports of all events in  
26 Sierra Leone were sent from Koidu to Charles Taylor. So that is  
27 an allegation made by witnesses suggesting that Charles Taylor  
28 kept abreast of what was going on in Sierra Leone. The same  
29 witness who says radio reports were sent in 1998, of all events

1 in Sierra Leone to Charles Taylor, that same witness turns around  
2 and says, at page 4729 through 4730, he did not have access to  
3 radio communication between 1997 and 2000. That is the nature of  
4 the evidence that has been presented.

12:21:33 5 Your Honours do not have to pass on the witness's  
6 credibility; you just have to assume the truthfulness and  
7 believability of what he said. But if they are contradictory we  
8 would submit that they take it into the realm of something that  
9 is obviously incredible and obviously unreliable. The case law  
12:21:52 10 makes that distinction and allows you at that point to discount  
11 and disregard evidence. You can relegate it to the category of  
12 there being no evidence capable of supporting a conviction.

13 Another witness testified at page 16352 through 16353 that  
14 he did not recall hearing or seeing messages containing orders or  
12:22:29 15 instructions from Charles Taylor or any one of his people  
16 concerning the Freetown invasion. This is a Prosecution witness  
17 commenting on the 6 January invasion of Freetown. The witness  
18 adds that at no stage did he hear anyone say Sam Bockarie had  
19 been given arms by Charles Taylor to attack Freetown. He adds  
12:23:04 20 not at any time did he hear anyone say - rather did he hear  
21 Charles Taylor discussing any kind of military strategy with  
22 Sam Bockarie. This is a Prosecution witness concerning the 6  
23 January invasion of Freetown.

24 Now, we recall the troops who went into Freetown were AFRC.  
12:23:32 25 We recall the Prosecution in its case summary suggesting as of 28  
26 May 1997 there arose, if you will, a common purpose in the  
27 context of a joint criminal enterprise with Charles Taylor.  
28 Well, a Prosecution witness came here and spoke of Taylor's  
29 meeting with Johnny Paul Koroma, and at page 100569 through

1 100588 that witness says in sum and substance that Johnny Paul  
2 Koroma told the witness that Charles Taylor had said the witness  
3 and other members of the AFRC should go to Liberia. The witness  
4 met a helicopter in Foya with Sam Bockarie and Daniel Tamba  
12:24:30 5 inside and he was flown to Monrovia. There was a guesthouse that  
6 was owned or there was a guesthouse in which there was a radio  
7 set owned by the RUF in it; this in Monrovia. The West Side Boys  
8 arrived and they met somebody named 50. Your Honours know from  
9 the evidence witnesses have said 50 is Benjamin Yeaten. 50 was  
12:24:59 10 said to be the SSS and close to Charles Taylor. 50 told them  
11 about the meeting. The witness was taken to Charles Taylor's  
12 mansion. He met Charles Taylor. Charles Taylor encouraged the  
13 West Side Boys to respect the Lome Peace Accord and Charles  
14 Taylor gave Johnny Paul Koroma and Bazzy Kamara brown envelopes  
12:25:36 15 containing money. Charles Taylor encouraged the West Side Boys  
16 to respect the Lome Peace Accord.

17 The fact that Johnny Paul Koroma, assuming if it is true,  
18 and other members of the Armed Forces Revolutionary Council go to  
19 Liberia to Charles Taylor's Executive Mansion or, for the sake of  
12:25:57 20 argument, even White Flower, whichever one one chooses, and  
21 Charles Taylor encourages them to respect the Lome Peace Accord,  
22 does that suffice to show evidence of a shared intent; a shared  
23 intent possessed in the context of a joint criminal enterprise, a  
24 joint criminal enterprise with the same common purpose as that  
12:26:21 25 which manifested itself in Libya on or about in 1988 between  
26 Foday Sankoh and Charles Taylor?

27 Is it consistent with this alleged common purpose, one  
28 permutation of which was that the two men would take over the  
29 leadership of their respective countries? For Charles Taylor to

1 extend a hand to Johnny Paul Koroma, the leader of a group which  
2 otherwise until 1997 had been in conflict with the RUF, is that  
3 not inconsistent with Charles Taylor's agreement or common plan  
4 with Foday Sankoh at a time when Foday Sankoh arguably, I believe  
12:27:09 5 at this time Foday Sankoh was no longer in custody, because this  
6 meeting suggests or the witness suggests this meeting took place  
7 in August of 1999.

8 So you have Charles Taylor meeting with Johnny Paul Koroma,  
9 a competitor if you will, for the leadership of the government of  
12:27:33 10 Sierra Leone, giving them money, when Foday Sankoh was not  
11 present.

12 What is interesting is the Prosecution called another  
13 witness, and I believe this person took the status of an expert  
14 witness, TF1-588, and that witness said that Charles Taylor was  
12:27:59 15 involved in the Lome Peace Agreement. The witness said - and  
16 this is at page 16856 through 16859 - the witness agreed that by  
17 the year 2000 Charles Taylor was the lead president within ECOWAS  
18 with responsibility for trying to resolve issues in the civil war  
19 in Sierra Leone. That is another Prosecution witness saying that  
12:28:35 20 Charles Taylor in some ways was positively involved - positively  
21 in this sense as instructed, if you will - the lead president  
22 within ECOWAS with responsibility for trying to resolve issues in  
23 Sierra Leone.

24 So what was the intent of Charles Taylor in meddling, if  
12:28:58 25 you will, accepting for the sake of argument, with these events  
26 in Sierra Leone assuming that this meeting in fact took place?

27 The same Prosecution that alleges criminal objectives  
28 brings witnesses that speak of ECOWAS mandating Charles Taylor to  
29 become involved. Your Honours are obliged, we submit, to

1 consider all of the evidence that has been presented as you  
2 consider the sufficiency or propriety of the Rule 98 standard  
3 vis-a-vis the mode of liability of joint criminal enterprise.

4 Now, there is another witness that has come before the  
12:30:02 5 Court and spoke about an elaborate plan of sorts between Charles  
6 Taylor and Foday Sankoh. The relevant portion of the transcript  
7 is at 4804 and 4806.

8 The same witness says that Foday Sankoh told the witness  
9 that he and his brother Charles Taylor were taking the war to  
12:30:28 10 Freetown. That is what the witness says. The temporal time  
11 frame for this, as suggested by the witness, was in 1990, not  
12 1999 dealing with the 6 January invasion, but 1990. The witness  
13 says Foday Sankoh told the witness that he and Charles Taylor  
14 were bound together to fight. They would first fight in Liberia,  
12:30:59 15 then in Sierra Leone. Foday Sankoh explained to the witness how  
16 he and Charles Taylor were going to take over Sierra Leone.

17 This same witness says, at page 4816 through 4818 -  
18 actually, I which draw that. At page 4958 and 4959 that she  
19 never saw or the witness never saw Charles Taylor in Sierra  
12:31:37 20 Leone. The witness never saw Charles Taylor in Sierra Leone.  
21 This is not a fact in dispute. I don't believe in any of their  
22 accusatory instruments or pronouncements the Prosecution has  
23 suggested anywhere that Charles Taylor set foot in Sierra Leone.

24 Now, that does not mean that there is a proximity  
12:32:00 25 requirement in the context of the pleading of joint criminal  
26 enterprise that a co-perpetrator must necessarily be within a  
27 particular distance or geographic radius of the situs of the  
28 manifested crimes, but it is an important point to note. In all  
29 this time we are talking about Charles Taylor and his alleged

1 interests in Sierra Leone, where witnesses one after the other  
2 come and suggest that Charles Taylor would send Benjamin Yeaten  
3 and others into Sierra Leone, not once is there any evidence  
4 showing that Charles Taylor entered the Republic of Sierra Leone  
12:32:40 5 to see for himself what was going on, not even to assess the  
6 alleged resources that he is said to have desired to pillage or  
7 steal.

8 Let us consider another person who was in Libya when this  
9 plan manifested itself. A witness came before your Honours. The  
12:33:05 10 witness said that he met Charles Taylor in Libya. They met three  
11 times at Camp Mataba in the vicinity of Tripoli. He also met  
12 Foday Sankoh at this point in time, the temporal time frame being  
13 1990. I believe I have given the relevant citation to the  
14 transcript, but I will give it again. Page 3428 through page  
12:33:49 15 3432.

16 The witness - the same witness - says Charles Taylor, Foday  
17 Sankoh and a Dr Manneh and their respective groups, meaning the  
18 NPFL, Foday Sankoh's RUF and the group Manneh was with, travelled  
19 to Burkina Faso. This was in 1990.

12:34:21 20 The witness states, at page 3446 through 3447, he was told  
21 by Dr Manneh that there was a meeting in Ouagadougou Burkina  
22 Faso, formerly the Upper Volta, between Manneh, Charles Taylor  
23 and Foday Sankoh. That at this meeting it was agreed that the  
24 Gambians and Sierra Leoneans would help Charles Taylor in his war  
12:34:55 25 and if he succeeded then he would help the Gambians and Sierra  
26 Leoneans in their war. Pause there.

27 There is another group included in the mix, the Gambians,  
28 Dr Manneh also in Libya. There is evidence alleging a meeting in  
29 Ouagadougou contemplating what in sum and substance may be deemed

1 a common plan; the context of a joint criminal enterprise. Could  
2 it be said that Charles Taylor could be charged with crimes that  
3 occurred in Guinea, if you develop this to its proper extension?

4 There has been evidence of Dr Manneh and his fighters.

12:35:50

5 Could it be alleged that Charles Taylor had a common plan or  
6 purpose with Dr Manneh to commit crimes in Guinea? If you can  
7 make the same conclusion - arrive at the same conclusion -  
8 vis-a-vis Foday Sankoh, one of a number of persons Charles Taylor  
9 met in Libya, why not draw it with Dr Manneh? They are also

12:36:17

10 meeting in Burkina Faso. Could the allegation be that the  
11 President of Burkina Faso at the time, I believe it was  
12 his Excellency Blaise Compaore, but perhaps he came in after  
13 1990, but could it be alleged that at that time that person in  
14 hosting these individuals facilitated the joint criminal

12:36:37

15 enterprise?

16 These are said to be insurgents who went for military  
17 training in Libya, armed men, meeting in Burkina Faso. Where is  
18 the evidence about NPFL fighters going into Guinea - sorry,  
19 Gambia, The Gambia, to assist Dr Manneh? These are factors that  
20 your Honours can consider on the basis of what is on the record,  
21 in the particular context of joint criminal enterprise as a mode  
22 of liability.

12:37:07

23 Now, our Appeals Chamber - and I think our President is in  
24 the public gallery - the President and the other Justices of the  
25 Appeals Chamber have held that where the common plan, design or  
26 purpose is not a criminal offence punishable under Articles 2, 3,  
27 4 of the statute, it suffices if the means that is contemplated  
28 to carry out that common plan, design or purpose is a crime  
29 within the ambit of the statute. This is the AFRC appeals

12:37:31



1 judgment. I believe it is paragraph 76 or thereabouts. Yes,  
2 paragraph 76. The means can suffice if it is a crime punishable  
3 under the statute.

4 When you read the various permutations of the JCE  
12:38:32 5 allegations in this case, one possible inference is that  
6 spreading terror could be viewed as a means towards an end. For  
7 the sake of argument we waive no arguments pending before the  
8 Appeals Chamber, but let us assume that for the sake of argument.  
9 This brings us back to Count 1, terrorising the civilian  
12:39:04 10 population, acts of terrorism. Let us assume for the sake of  
11 argument it is a means, since our submission has so far been that  
12 the common purpose, if any, was not criminal. Well, every  
13 participant or co-perpetrator in the common plan of this joint  
14 criminal enterprise must share the same intent even with respect  
12:39:29 15 to the means. They must share the intent of terrorising the  
16 civilian population of Sierra Leone and what is significant in  
17 all of this is your Honours then have to look as a separate  
18 analytical exercise at the elements of the crime of acts of  
19 terrorism.

12:39:50 20 A fundamental aspect of that crime is that the primary  
21 purpose be terror. This is separate and distinct a requirement  
22 from anything to do with joint criminal enterprise. If the crime  
23 of acts of terrorism was manifested in any other context,  
24 separate and distinct from a joint criminal enterprise, that  
12:40:15 25 requirement that the primary purpose be terror, when the acts or  
26 threats of violence are directed against the population or their  
27 property, that requirement doesn't change.

28 So all these perpetrators or co-perpetrators in a joint  
29 criminal enterprise, for the sake of argument, with differing

1 common purposes or plans, one person wants to become president of  
2 Sierra Leone, the other person wants to go into Freetown because  
3 they want to restore the SLAs, they all must share the intent  
4 vis-a-vis the means by which they are to facilitate their  
12:41:04 5 criminal enterprise, the intent of spreading terror throughout  
6 Sierra Leone and the case law has defined terror as being extreme  
7 fear.

8 We take the position that these pleading requirements  
9 cannot be diluted despite the geographic scope and temporal  
12:41:30 10 period of the crimes alleged in this case. These are fundamental  
11 notions in criminal law in how crimes are put together and how  
12 they are pleaded and how they are proved. The evidence must  
13 touch each and every one of those elements.

14 Can it be shown that the disparate actions of Charles  
12:41:55 15 Taylor alleged by the witnesses was coupled with the intent, the  
16 primary purpose behind them of terror, could that be said, that  
17 when he gives Johnny Paul Koroma \$15,000 as alleged, that his  
18 mens rea was to facilitate a crime within the context of a joint  
19 criminal enterprise, to facilitate in particular the crime of  
12:42:26 20 acts of terrorism against the population of Sierra Leone,  
21 throughout Sierra Leone, no geographic limitation within the  
22 country, that was his primary purpose? When you consider the  
23 Prosecution's evidence in that light, we submit it fails. It  
24 does not pass the standard under Rule 98.

12:42:57 25 There is another mode of liability under Article 6.3,  
26 superior criminal responsibility. That mode of liability is  
27 manifested in the indictment in paragraph 34 and here the  
28 Prosecution alleges that Mr Taylor is responsible in addition or  
29 alternatively pursuant to Article 6.3, it reads:

1           "The accused, while holding positions of superior  
2 responsibility and exercising command and control over  
3 subordinate members of the RUF, AFRC, AFRC/RUF Junta or alliance,  
4 and/or Liberian fighters, is individually criminally responsible  
12:43:59 5 for the crimes referred to in Articles 2, 3, 4 as alleged in the  
6 indictment. The accused is responsible for the criminal acts of  
7 his subordinates in that he knew or had reason to know that the  
8 subordinate was about to commit such acts or had done so and the  
9 accused failed to take the necessary and reasonable measures to  
12:44:25 10 prevent such acts or to punish the perpetrators thereof."

11           That is in sum and substance the core of Article 6.3 of the  
12 statute. Interestingly, in the particulars of the various counts  
13 in the indictment, the Prosecution uses the phrase "under the  
14 direction and/or control of and/or subordinate to the accused".  
12:44:52 15 This is used in paragraph 5 in the particulars. This is used in  
16 paragraph 9 in the particulars. This is used in paragraph 18 in  
17 the particulars. It is also used in paragraph 23 in the  
18 particulars, as well as in paragraph 22. This is the whole  
19 notion of command and control, or command responsibility.

12:45:18 20           Now, again the legal requirements apply. There is the  
21 notion of effective control. To suggest that someone has the  
22 power to prevent the acts of a subordinate or to punish them they  
23 must have an element of control. The case law uses the phrase in  
24 the context of a superior that is not a military person, and that  
12:45:55 25 would be Charles Taylor, as a civilian President of Liberia, that  
26 their de facto exercise of control or authority, it must be  
27 accompanied with the trappings of the exercise of the de jure  
28 authority and this is important.

29           I will cite the Bagilishema trial judgment at paragraphs 40

1 through 42. There is also the Celebici case, the Delalic case,  
2 and I see that I don't have the paragraph citation to that, but  
3 we can find it. Well, we have cited Bagilishema in any event and  
4 we will look for Delalic. The accused must have a material  
12:47:02 5 ability to prevent or punish the criminal conduct. This is the  
6 essence of effective control. So when you hear evidence of  
7 Superman disobeying orders and going off somewhere in Sierra  
8 Leone and undertaking an offensive not authorised by the  
9 leadership of the RUF, assuming for the sake of argument that the  
12:47:26 10 Prosecution has shown a relationship between Charles Taylor and  
11 the RUF, in that context would Charles Taylor have a material  
12 ability to prevent or punish the criminal conduct of Superman?

13 Mind you, this criminal conduct, like all other acts or  
14 omissions, must be one punishable under the statute. We submit  
12:47:48 15 that when you apply these legal principles to the unique facts  
16 that each witness testifies about, more often than not you will  
17 not find that the facts are sustainable. You will often find the  
18 lack of an effective ability to prevent or punish any of these  
19 crimes.

12:48:11 20 There is also the element that the Prosecution would have  
21 to show that Charles Taylor was aware of these offences. It is  
22 not enough in our submission to say that because it is reported  
23 in the media that somewhere in Kailahun civilians were killed,  
24 that Charles Taylor from that should deduce that somewhere else  
12:48:36 25 in Masiaka civilians were being killed. For these allegations  
26 the Prosecution has to show that for each and every one of these  
27 events that he is supposedly unable or unwilling, rather  
28 unwilling to prevent or punish, that he had knowledge of them,  
29 that he knew of them, what specifically manifested themselves on

1 the ground and that these events were crimes punishable under the  
2 statute.

3 Let us consider an example that someone might say suggests  
4 he had some control. A witness testified that peacekeepers  
12:49:30 5 belonging to ECOMOG were captured by the RUF. This is at page  
6 2029. The witness says this is when Sam Bockarie was in charge  
7 the RUF captured 11 ECOMOG peacekeepers. Yeaten told  
8 Sam Bockarie to release them.

9 This on its face would suggest that Charles Taylor had some  
12:50:10 10 measure of authority over the RUF. There is also evidence by the  
11 same witness, on page 2029 and 2031, that Charles Taylor  
12 instructed Issa Sesay, when Issa Sesay was in charge, to release  
13 Kenyan and Zambian peacekeepers. It is said that Issa Sesay  
14 relayed the news to commanders in Makeni.

12:50:56 15 Well, the Prosecution called another witness, TF1-588, who  
16 said at page 16856, that is 16856 through 16859, that in 2000  
17 Kofi Annan, then Secretary-General of the United Nations had  
18 asked Charles Taylor to play a part in resolving the UN  
19 peacekeepers' hostage taking. So you have the President of  
12:51:36 20 Liberia being asked by the Secretary-General of the United  
21 Nations, Liberia was a founding member of the United Nations,  
22 Kofi Annan asking Charles Taylor to play a part in resolving the  
23 UN peacekeepers' hostage taking.

24 The witness went on to say that Charles Taylor was in a  
12:52:00 25 dilemma, that the more Charles Taylor acted as an intermediary  
26 outside powers, especially the United States and Great Britain,  
27 would say that Charles Taylor held sway over the rebel movement  
28 in Sierra Leone and would stress the connection he had. If he  
29 did not act, the witness said that Charles Taylor would be blamed

1 for his obstructive role. He cannot win. Secretary-General is  
2 saying "Get involved. Help us get this UN hostage peacekeepers  
3 out." Witnesses are saying he was intermeddling to the degree of  
4 exercising control over the RUF.

12:53:03 5 None of this comes from a Defence witness, all from  
6 Prosecution witnesses, and we submit that when you weigh such  
7 evidence, believing all the different versions to be true for the  
8 sake of argument, that your Honours will come to the conclusion  
9 that within the context of Rule 98 such evidence is not capable  
12:53:28 10 of sustaining or supporting a conviction.

11 Now, we have gone through the different modes of liability  
12 and again I stress - I emphasise - this is a case about the  
13 degree of Charles Taylor's responsibility, his participation. It  
14 is not a case about what crimes occurred in Sierra Leone. It is  
12:53:50 15 not a case about the gravity of those crimes. It is a case of  
16 methodically and meticulously going element by element, crime by  
17 crime, element by element vis-a-vis each of the seven modes of  
18 liability, planning, instigating, ordering, committing, aiding  
19 and abetting in the planning, preparation and execution, joint  
12:54:14 20 criminal enterprise, Article 6.3 superior responsibility, each  
21 and every one of those elements, when you consider those modes of  
22 liability, each and every one of the counts in this indictment  
23 fails. It fails at this juncture of the case midway through and  
24 assuming for the sake of argument the case proceeds beyond this  
12:54:36 25 point it will fail. May I have a moment, Mr President?

26 PRESIDING JUDGE: Yes, Mr Anyah.

27 MR ANYAH: Thank you. I made a reference to the Celebici  
28 judgment, the Delalic judgment and a particular paragraph for the  
29 proposition that the exercise of de facto authority by a civilian

1 leader must be accompanied by the trappings of the exercise of de  
2 jure authority. The relevant paragraph is 378 of Delalic.

3 Your Honours, we do not invite your Honours to engage in a  
4 legally prohibited reasoning at this stage on assessing  
12:56:21 5 credibility of witnesses. Nonetheless, where in the plain black  
6 and white of an approved transcript that evidence is so rife by  
7 contradictions internally, and so inconsistent with other  
8 incontrovertible facts, that it can be properly regarded as being  
9 incredible, you have the judicial discretion even at this stage  
12:56:55 10 to reject the evidence.

11 I began as your Honours convened at 9.30 and I reckoned I  
12 would not go through 1.30 and this concludes my presentation and  
13 all that is left is for me to thank you for your attention.

14 PRESIDING JUDGE: Yes, thank you, Mr Anyah. Now,  
12:57:18 15 Ms Hollis, the Prosecution of course is entitled to a reasonable  
16 time to respond to the Defence submissions.

17 MS HOLLIS: Mr President, we would ask that we be allowed  
18 to respond Thursday morning. That is the 9th, I believe.

19 PRESIDING JUDGE: All right. Well, I gather that doesn't  
12:57:43 20 cause any problem to the Defence?

21 MR ANYAH: For me, Mr President, personally I will be able  
22 to attend the proceedings on Thursday, but I had already obtained  
23 leave from our trial team in relation to - well, Friday is a  
24 holiday I believe, so we are all off on Friday. Then I am on  
12:58:06 25 safe grounds. Thank you.

26 PRESIDING JUDGE: All right. Thank you, Mr Anyah.  
27 Thursday morning, 9 April, Ms Hollis. I think you appreciate  
28 that you will be on the same time limit as the Defence was to  
29 conclude your submissions by 1.30 at the latest.

1 MS HOLLIS: Yes, Mr President, we understand that.

2 PRESIDING JUDGE: All right, thank you. Well, we will  
3 adjourn this case until Thursday, that is this Thursday, 9 April,  
4 at 9.30 to hear the Prosecution response to the Defence  
12:58:37 5 submissions pursuant to Rule 98.

6 [Whereupon the hearing adjourned at 12.55 p.m.  
7 to be reconvened on Thursday, 9 April 2009 at  
8 9.30 a.m.]

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