

CHARLES TAYLOR TRIAL REPORT (January 7 - February 1, 2008)

Overview

The trial of Charles Taylor before the Special Court for Sierra Leone resumed in the Hague on January 7, 2008. According to Chief Prosecutor Stephen Rapp, the Prosecution intends to present evidence through approximately 144 witnesses, consisting of 8 expert witnesses, 77 witnesses who will testify in court or by written submission about the underlying crimes referenced in the indictment (“crime-base witnesses”), and 59 “linkage witnesses,” who will purportedly link Taylor to those crimes. Members of the Defense team have stated that there is no dispute that atrocities occurred in Sierra Leone, but that Taylor is contesting the allegations that he supported the rebels responsible for the underlying crimes, the Revolutionary United Front (“RUF”).

During the first four weeks of the trial, the Prosecution called nine witnesses:

1. Ian Smillie (expert)
2. Alex Tamba Teh (crime-base)
3. Varmuyan Sherif (linkage)
4. Dennis Koker (crime-base)
5. Dr. Stephen Ellis (expert)
6. Father Chema (crime-base)
7. Corinne Dufka (expert)
8. Abu Keita (linkage)
9. TF1-371 (testified in closed session)

These witnesses provided testimony on a variety of subjects, including first-hand accounts of atrocities committed by the RUF, information on the exchange of diamonds and weapons between Sierra Leone and Liberia, and links between Taylor and the RUF. The most significant testimony was provided by two Liberians (Sherif and Keita), both alleged to be former Taylor government insiders, who identified specific instances where Taylor’s government provided support to the RUF rebels with his knowledge and on his instructions.

The Defense team methodically attacked the credibility of seven of the nine Prosecution witnesses by challenging the qualifications of expert witnesses and exposing inconsistencies in statements given by others. The Defense also emphasized the chaos within the region and Taylor’s lack of control over the forces involved and the crimes that occurred. The Defense

team also attempted to paint an alternative picture of the situation in Sierra Leone and Liberia, emphasizing Taylor's desire to reconcile warring factions after his election as president in 1997.

The first three weeks raised many procedural and substantive, including questions about the qualifications of expert witnesses, the admissibility of hearsay evidence, the legal requirements for establishing command responsibility, the territorial and temporal limitations of Taylor's indictment, and the safety and logistics of ensuring adequate protective measures for some witnesses.

Prosecution Witnesses¹

(1) Ian Smillie (expert witness). Ian Smillie, a Research Coordinator with Partnership Africa Canada's "Diamonds and Human Security Project" and a diamond expert, was the Prosecution's first witness. Smillie contributed to a United Nations report addressing the issue of conflict diamonds and drafted a report for the Trial Chamber, "Diamonds, the RUF and the Liberia Connection." Smillie described the presence of diamonds in Kono District and Tongo Field in the Kemena region of Sierra Leone and confirmed that the RUF transformed diamond fields into labor camps. Smillie's expertise in conflict diamonds forms the backdrop of the Prosecution's emphasis on a "campaign of terror" in certain diamond-producing districts of Sierra Leone. Under this theory, terror was a means to control the territory and diamonds of the region. Smillie also provided evidence that diamonds from Sierra Leone were funneled through Liberia, which generally had lower quality diamonds.

The Defense team responded by attacking Smillie's qualifications and training, questioning the accuracy of statistics in his reports, and highlighting Smillie's lack of knowledge about Liberian diamond production. The Defense team also noted that illicit diamonds were common throughout the region (before the Kimberley Process, 20 to 25 percent of diamonds were illicit) and pointed to widespread confusion over the origin of diamonds. The Defense team also challenged Smillie's impartiality and asked Smillie if he had hostile predispositions toward Taylor. Smillie responded that he felt sorry for Taylor for not seizing the opportunity to bring peace to the region.

(2) Alex Tamba Teh (primarily crime-base witness). The Prosecution's second witness, Alex Tamba Teh, is a Sierra Leonean pastor who witnessed and experienced violence at the hands of RUF rebels in Kono District in 1998. Teh was formerly a protected witness (TF1-015) but waived his right to testify in closed session. Teh described horrific acts of violence he witnessed while in the custody of the RUF, including the gunning down of over 100 people by a rebel commander, the subsequent decapitation of these victims by Small Boy Units ("SBUs"), and the amputation of arms and legs of a boy by a rebels.

Teh also testified about connections between Taylor and the RUF he observed while in the custody of the rebels. For example, Teh heard RUF leader Sam Bockarie (a.k.a., "Mosquito") say, "yes, ok sir" and then tell his men that he needed to go to Liberia. Teh also testified about

¹ This report provides a summary overview of certain key testimony from the trial to date. More details about the testimony from each witness is available on this website by accessing the daily trial reports and the links to the publicly-available trial transcripts.

one instance where Bockarie referred to his boss as “Ghankay Taylor.” In addition, Teh testified that he and RUF rebels took civilians to transport arms and ammunition from Liberia back to Sierra Leone. In Dawa, he saw a helicopter marked “Liberia Airways” or something similar from which arms and ammunitions were unloaded.

The Defense attacked inconsistencies between Teh’s testimony and prior statements he gave to the Office of the Prosecutor (“OTP”), including his failure to reference the two above-mentioned incidents involving Bockarie that appeared to connect Bockarie with Taylor.

(3) Varmuyan Sherif (linkage witness). The Prosecution’s third witness, Varmuyan Sherif, is a former member of the Special Security Service (“SSS”), Taylor’s personal security force. Sherif previously was a member of United Liberian Movement for Democracy (“ULIMO”) in the early 1990s, which fought against the National Patriotic Front of Liberia (“NPFL”) -- led by Taylor -- and the RUF. When ULIMO split in 1994, he continued as a senior member of ULIMO-K under the leadership of Alhaji Kromah. Following a peace agreement among three warring factions, Taylor appointed Sherif as Assistant Director for Operations of the SSS, and Sherif served in that capacity until 1999/2000. Between 2000 and 2003, Sherif held positions with the Department of Immigration and was appointed by Taylor as Deputy Chief of Staff, Army Division. Sherif was previously identified as TF1-406 but waived protective measures and testified in open session.

Sherif’s testimony provided evidentiary links between Taylor and the RUF. Sherif spoke of radio communications between Bockarie and the Executive Mansion in Monrovia and an “RUF guesthouse” in that city, as well as Taylor’s alleged direct role in brokering a change in leadership in the RUF from Bockarie to Issa Sesay. Sherif also testified that Bockarie showed him a mayonnaise jar full of diamonds on his way to meet Taylor.

Sherif witnessed the movement of arms and ammunition from Liberia to the RUF in Sierra Leone, notably before the RUF’s attack on Freetown on January 6, 1999. Further demonstrating Taylor’s control over the RUF, Sherif was asked about two occasions where Taylor deployed RUF rebels: (1) Sherif overheard an order by Benjamin Yeaten, Director of the SSS, (acting on Taylor’s instructions) to Bockarie to launch an attack on Guinea from Sierra Leone, and this attack was carried out; (2) following an attack by the Liberians United for Reconciliation and Democracy (“LURD”) on Liberia in the late 1990’s, RUF fighters were invited by Taylor to assist Liberian troops.

Importantly, Sherif spoke of Taylor’s instructions to contact a former senior ULIMO commander to travel to Sierra Leone to work with Bockarie. Sherif recruited Abu Keita, a witness who testified later at trial. According to Sherif, he and Keita attended a meeting with a number of officials from Taylor’s government in which they discussed how to carry out various attacks.

The Defense attempted to show Sherif’s bias, and Sherif told the Court that he hated the NPFL and Taylor after he was forced to flee multiple times following NPFL advances in the early 1990s. The Defense sought to show that as a Mandingo, Sherif was plotting against Taylor even while working in his government, and had contacts with the Guinea-backed LURD rebel movement against Taylor. LURD grew out of ULIMO-K and Mandingos were prominent in

both organizations. The Defense also attempted to show that ULIMO and then LURD, and not Taylor, controlled the area between Sierra Leone and Liberia, and suggested that ULIMO had been selling arms to the RUF. According to the Defense, Sherif's refusal to concede this point conflicted with his prior statement to the Prosecution. The Defense further challenged Sherif's insider status and alleged that Sherif suffered from mental illness. On cross-examination, it also emerged that Sherif had traveled with Taylor loyalist Roland Duo in 2003 to visit Benjamin Yeaten in Togo and then Taylor himself in Calabar, Nigeria – on a visit that also took Duo and Sherif to see Guinean President Lansana Conté. This surprising testimony potentially contradicted the Defense argument that Sherif was an unimportant figure.

The Defense emphasized Sherif's prior inconsistent statements to the OTP, including one statement where Sherif told the OTP that he learned that Bockarie had given a bag of diamonds to Musa Cisse, Taylor's Chief of Protocol (making no mention of the mayonnaise jar full of diamonds he identified on direct examination). Sherif maintained his composure, explaining on this particular point that he feared prosecution by the Special Court and did not give the Prosecution all the information he knew until later.

(4) Dennis Koker (crime-base witness). Dennis Koker, the Prosecution's fourth witness, is a member of the Mende tribe from Sierra Leone. Koker joined the Sierra Leonean army in 1991 and held this position until the National Provisional Ruling Council ("NPRC") government was overthrown in January 1996. Koker was relocated to the Juba Barracks in Freetown to work for the Electrical and Mechanical Engineering Unit as a sign writer. On cross-examination, he explained that he later joined the AFRC in February 1998 and the RUF in March 1998.

Koker testified about a variety of crimes he observed in Sierra Leone, including a detailed description of "Operation No Living Thing" that took place while he was in Kono District, which included large-scale burnings to make it impossible for ECOMOG or government troops to remain in the town of Koidu. Koker detailed the AFRC/RUF's brutal treatment of civilians, including women who were forced to become the "wives" of RUF commanders, and children, who were separated from their families and forced to fight for the RUF in SBUs.

Koker also testified concerning the delivery of arms from Liberia into Sierra Leone. Koker linked Taylor to an incident where the RUF and AFRC forces broke into a bank in Koidu and stole diamonds and money, testifying that the money and diamonds were being taken to Taylor in Liberia.

The Defense pointed out Koker's inconsistent statements from an earlier AFRC proceeding, including inconsistent statements about uniforms worn by Liberian men when arms were delivered to Bockarie in Buedu, as well as Koker's inconsistent statements in his past testimony regarding the appearance of the Liberian men at Bockarie's home during the delivery of arms. The Defense team also raised the possibility that he has received psychiatric treatment.

(5) Dr. Stephen Ellis (expert witness). Dr. Stephen Ellis is an expert in African studies who received his doctorate from Oxford University and currently serves as a senior researcher at the Africa Studies Center, University of Leiden. He has also worked in the International Secretariat of Amnesty International (with a focus on West Africa) and served as Editor for Africa

Confidential. In 2003, he took leave to work for the International Crisis Group as Director of the Africa Program.

Dr. Ellis's testimony included historical accounts of the conflict in Liberia and Sierra Leone. Dr. Ellis explained that the report he prepared for the Special Court concentrated on the period from 1997 to 2000, but also included information into the year 2003. He was asked to include information about events that occurred during this period in Liberia and how they affected Sierra Leone.

Dr. Ellis spoke of Taylor's historical connections to Sierra Leone. According to Dr. Ellis, Taylor's association with the civil war can be traced to his acquaintance with Sierra Leonean revolutionaries in Libya who saw themselves as pan-African revolutionaries. Dr. Ellis also explained the role of diamonds in financing the RUF, stating that the UN Panel of Experts report on Liberia (authored in part by the Prosecution's first expert witness, Ian Smillie) supported findings that Taylor funneled weapons to the RUF in Sierra Leone in exchange for diamonds. Dr. Ellis also described the role of arms in the conflict, detailing a conversation he had with an ECOMOG commander regarding the supply of weapons to the RUF in Sierra Leone. The commander accused Taylor of flying arms to the RUF using Ukrainian planes and crews. Dr. Ellis noted that Taylor's influence over the RUF became evident when the RUF abducted UN peacekeepers and Taylor proposed himself as an intermediary to negotiate their release.

The Defense conducted a thorough cross-examination of Dr. Ellis that centered on the history of conflict in Liberia and neighboring West African states. Defense counsel questioned Dr. Ellis regarding the development of relations between Liberia and Sierra Leone, beginning in the Libyan training camps that several prominent leaders from both countries attended. Dr. Ellis also discussed Liberia's diplomatic relations with the United States, including the relationship between the US and Liberia's presidents and leaders. He also testified about the period of conflict between Sierra Leone and Liberia spanning from the early 1990's to 2003. Dr. Ellis explained the relationships among the RUF, NPFL, ECOWAS, ULIMO and tribal groups that were involved in the war.

(6) Father Chema (crime-base witness). José Maria Caballero, a Catholic priest known as Father Chema, is a native citizen of Spain and resident of Sierra Leone who was in the country during the civil war. Father Chema started a program for the rehabilitation and treatment of child soldiers in 1999, and testified concerning the use of girls as sex slaves by the RUF and the recruitment, training and use of child soldiers by various forces, including the RUF.

The Defense conducted a very brief cross-examination of Father Chema, noting minor inconsistencies in Father Chema's reporting methods.

(7) Corinne Dufka (expert witness). Corinne Dufka, is a Senior Researcher for the Africa Division of Human Rights Watch specializing in West Africa. Dufka obtained her Bachelor's degree in social work from San Francisco University and studied clinical and psychiatric social work at University of California, Berkeley. Before working with Human Rights Watch, she was a social worker and a photojournalist. She began working with Human Rights Watch in 1999

when the organization decided to open a field office in Sierra Leone. From October 2002 to 2003, Dufka worked in the Office of the Prosecutor for the Special Court of Sierra Leone as a senior human rights adviser.

Dufka presented a report to the Court based largely on other reports that she wrote and researched for Human Rights Watch. She testified that the Liberian government was likely on notice of the atrocities committed in Sierra Leone based on the wide dissemination of Human Rights Watch reports that included recommendations to Liberia and Taylor. Dufka also testified regarding Liberian involvement in the conflict in Sierra Leone, having interviewed two RUF combatants and victims with knowledge of Liberian involvement in the conflict.

The Defense's cross-examination attempted to discredit Dufka as an expert witness, as well as discredit her report. The Defense attacked Dufka's credibility on four main grounds: (1) impartiality based on her work with OTP in 2002-2003 and the fact that the Prosecution intends to call at least 18 witnesses she interviewed; (2) her qualifications as an expert; (3) her methods of reporting, and (4) temporal and geographical limitations based on the scope of the indictment. The Defense also confronted Dufka regarding Human Rights Watch's emphasis on maintaining the confidentiality of victims, which may increase the risk of biased or exaggerated testimony and which could conflict with Taylor's right to a fair trial, as he will not be able to verify whether certain accusations and alleged atrocities did in fact take place.

The Defense sought written submissions regarding (1) the definition of an "expert" in general, (2) whether Dufka qualifies as an expert, and (3) whether the reports tendered through Dufka are admissible. The Court granted the Defense team's request and gave the Defense until close of business on Monday, January 28, 2008, to file its submission. The Prosecution has until Friday, February 1, 2008, to submit a response, and the Defense has until Thursday, February 7, 2008, to submit any reply.

(8) Abu Keita (linkage witness). Abu Keita, a Mandingo, joined the Armed Forces of Liberia ("AFL") in 1990, but fled to Sierra Leone shortly after the death of Liberian President Samuel Doe. He later joined the Liberia United Defense Force ("LUDF") in Sierra Leone when the Sierra Leonean army disarmed remnants of the AFL. The LUDF received weapons from the Sierra Leonean government and fought against the RUF in Sierra Leone. LUDF later became ULIMO, and in 1994 ULIMO split into the largely Mandingo ULIMO-K and largely Krahn ULIMO-J. Keita was a General with ULIMO-K until disarmed in 1996.

Keita detailed the history of his involvement with the RUF and corroborated some of the earlier testimony by Varmuyan Sherif. Keita was arrested for his involvement with ULIMO and taken to Saw Beach Prison. Sherif, Musa Cisse, Chief of Presidential Protocol, and Benjamin Yeaten told Keita to cooperate and Keita agreed. Keita met with Yeaten, Cisse, Sam Bockarie, and others. Yeaten asked Keita to join the RUF, and Keita agreed to be commander of the "Scorpion Unit," based in Buedu. Keita was present for an additional meeting with General Ibrahim Bah (a former fighter with NPFL) to discuss how Bah could find a buyer for RUF diamonds, as well as an additional meeting with Taylor himself. According to Keita, on Taylor's orders, Yeaten sent Keita to Sierra Leone with arms, ammunition, a Yesue radio, and three bodyguards.

Keita linked Taylor to Yeaten and Bockarie. Keita met with Bockarie on various occasions after he returned from Monrovia with men, weapons, and other supplies from Taylor. Keita also described how orders came from Taylor to Yeaten to Bockarie to Keita. In addition, Keita spoke of the release of peacekeepers on Taylor's orders.

The Defense referred to a number of inconsistencies between Keita's prior statements to OTP and his direct testimony. The Defense questioned whether Bah would speak about diamond sales and whether Taylor would speak about assistance to the RUF in front of an individual they had met for the first time that day; noted that Taylor's residence, White Flower, was not fully constructed in January 1999 when Keita allegedly went to Taylor's house and met Taylor; emphasized that Keita made no mention of meeting with Taylor in any of his previous interviews with the OTP; repeatedly questioned whether Keita was involved in a coup attempt against Taylor; alleged that Keita was in Buedu under the direction of Sheku Suwape Koroma and not at the behest of Taylor; and raised the possibility that Keita attempted to get other individuals to go along with his allegedly false testimony. The Defense also noted that Keita's testimony that in Buedu, Bockarie had taken his radio and bodyguards appeared to be inconsistent with the Prosecution's claim that Taylor was ultimately in charge of Bockarie and the RUF.

Prosecution Themes and Strategies

Through the testimony summarized above, it appears that the Prosecution will continue to try to establish: (1) details about the atrocities committed by the RUF, (2) connections between Taylor and individuals who committed atrocities in Sierra Leone, (3) noted the role of diamonds and arms sales in the Sierra Leone conflict, (4) Taylor's knowledge about the crimes committed in Sierra Leone, and (5) possible motives for Taylor's support of atrocities in Sierra Leone.

(1) Atrocities. The Prosecution asked Teh, Sherif, Koker, and Keita to discuss their first-hand experiences with RUF violence. In addition, Father Chema testified extensively about the use of child soldiers by the RUF.

(2) Linking Taylor to Crimes. The Prosecution used linkage witnesses Sherif and Keita (and to a more limited extent crime-base witnesses Teh and Koker) to connect Taylor to crimes committed by the RUF. The Prosecution emphasized Taylor's close relationship with Yeaten (who was allegedly like a "son" to Taylor) and Bockarie (who purportedly called Taylor his "father").

(3) The Role of Diamonds and Guns. Prosecution expert witnesses Smillie and Ellis detailed Liberia's involvement with conflict diamonds and the use of diamonds to fund RUF activities. Smillie testified that the control of sprawling alluvial diamond areas requires either a large security force or a campaign of terror to keep civilian miners away; the RUF used the latter tactic. Crime-base and linkage witnesses, such as Sherif, Koker, and Keita, spoke of the use of civilians in RUF diamond mining activities, as well as seeing RUF commanders with diamonds in their possession. Teh, Koker, and Keita described the delivery of guns and other materials from Liberia.

(4) Taylor's Notice of Atrocities. The Prosecution sought to establish that Taylor was on notice of the violence occurring in Sierra Leone. The Prosecution questioned Sherif regarding

television programs aired in Liberia detailing atrocities committed by the RUF and questioned Dufka regarding delivery of Human Rights Watch reports to heads of state.

(5) Taylor's Motives. The Prosecution sought to establish that Taylor was angered by Sierra Leone because the government of Joseph Momoh had refused permission to the NPFL to use Sierra Leone as a staging area for the 1989 NPFL invasion of Liberia, and because Sierra Leone subsequently served as a staging ground for ECOMOG forces at war with Taylor in Liberia. Expert witness Ellis and crime-base witness Teh recalled Taylor's interview with the BBC in 1991, in which he warned that Sierra Leone would "taste the bitterness of war". The NPFL and RUF were also motivated by pan-Africanist ideology, at least in their early days. The Prosecution argued that over time, control of Sierra Leone's diamonds became a larger motive for continuation of the war.

Defense Themes and Strategies

The Defense attempted to both undermine the Prosecution witness's credibility and show Taylor's lack of control and responsibility for the crimes committed.

(1) Undermining Witness Testimony.

- Inconsistent Prior Statements from Witnesses. The Defense compared witness testimonies with prior statements to the OTP. Although some of the inconsistencies appeared to be honest or inconsequential mistakes, others provided stark contradictions that witnesses were unable to explain. For example, Sherif was unable to recall why he omitted reference to Bockarie removing a jar of diamonds from his pocket in prior statements to the OTP, other than to explain that he recalled additional facts with each successive interview with the Prosecution.
- Attacks Against Expert Status of Prosecution Witnesses. The Defense attacked the expert status of both Smillie and Dufka. The Defense alleged that Smillie and Dufka lacked academic qualifications and that both Smillie and Dufka lack impartiality.
- OTP Payments to Witnesses. The Defense asked multiple witnesses about payments from the Prosecution, including Teh, Sherif, Koker, Father Chema, and Keita. During Sherif's testimony, the Defense noted that Sherif received certain payments after testifying about diamonds. For the most part, payments by the OTP to witnesses corresponded with valid travel and other expenses that were paid on behalf of the witness and not through cash payments.

(2) Questioning Taylor's Guilt.

- Taylor's Lack of Control over Territory and Forces. The Defense asserted that ULIMO and then LURD controlled territory along the Sierra Leone and Liberia borders, limiting Taylor's ability to control this area and making it virtually impossible for Taylor to send or receive materials. The Defense noted the general state of chaos within the region, the multitude of players, and the lack of uniform command structure.
- Commonality and Typicality of Crimes. The Defense noted that other groups committed atrocities similar to those committed by the RUF. The Defense questioned Sherif, who

conceded that ULIMO used child soldiers, mistreated civilians, and buried people alive. Father Chema agreed with the Defense that the use of child soldiers is not unique to RUF forces, Sierra Leone, or Africa. The Defense argued that it is more or less traditional in many rural areas of West Africa for adolescent boys to assume the position of warriors as part of their initiation into adulthood, and that it is not clear to what extent the use of child soldiers by the RUF is unique. In itself this cannot serve as a legal defense, but it appeared that the Defense was attempting to undermine a Prosecution claim that the RUF copied certain tactics used by Taylor's NPFL.

- Taylor's Goals of Reconciliation. The Defense emphasized that Taylor's presidency attempted to reconcile warring factions within the region. During its questioning of Sherif and Keita, the Defense stated that Taylor was eager to restore peace to Liberia and that Taylor brought former adversaries such as Sherif into his government because he was committed to peace.
- No Forced Labor in Mining Camps. Although the Defense is not challenging the existence of the crimes in the indictment, it appears to be laying the groundwork for a defense that forced labor in mining camps did not occur. The Defense questioned Koker with regard to inconsistencies in his testimony about the treatment of civilians in Sierra Leone by the RUF, noting that Koker had told the OTP that miners received medical treatment. The Defense also noted that bartering was a common form of exchange, implying that even though the RUF did not pay civilians for their labor, they received food and other intangibles in exchange for their labor.

Important Legal Issues

A number of important legal issues arose during the first three weeks of trial, including (1) classification of experts, (2) admissibility of hearsay evidence, (3) contours of command responsibility, (4) temporal and geographical limitations of the indictment, and (5) appropriate protections for protected witnesses.

(1) Expert Status and Admission of Expert Evidence. The Prosecution and the Defense argued over the appropriate qualifications necessary for expert witness status. The Prosecution cited cases from the International Criminal Tribunal for the former Yugoslavia ("ICTY") in support of its assertion that a witness having worked for the Prosecution does not exclude that person as an expert. In *Prosecutor v. Ljube Boskoski & Johan Tarculovski*, the ICTY defined an expert as anyone who by virtue of specialized knowledge, skill, and training can assist the trier of fact to understand or determine an issue in question. In *Prosecutor v. Radoslav Brdjanin*, the ICTY held that the ICTY Rules do not set a higher threshold for the admission of the evidence of an expert witness than the standard admissibility requirements.

The Defense relied on *Prosecutor v. Karemera et al.*, in which the International Criminal Tribunal for Rwanda ("ICTR") noted that the admissibility of expert witnesses turns on whether evidence would assist the judges. Where an expert's testimony is based on material similar to that let in evidence in the trial, expert testimony is unnecessary.

Notably, under ICTY and ICTR Rules 94*bis*B an opposing party can accept or not accept a witness's qualification as an expert. The Special Court equivalent Rule 94*bis*B has removed this

provision and only allows an opposing party to accept a witness statement or express its desire to cross-examine the witness. This may limit the Defense team's ability to challenge Dufka's status as an expert.

As discussed above, the Defense requested written submissions regarding the issue and the Court granted the Defense team's request.

(2) Hearsay. The Defense has raised hearsay issues and challenged the admission of various items into evidence. For example, the Defense challenged the admissibility of Dufka's report and its annex, alleging that admission of the report would violate Taylor's fundamental rights under Rule 17 of the Special Court's Statute. The Defense argued that the Court is unable to determine the reliability of the materials contained in this report and its annex because it is not hearing the testimony of those giving first-hand accounts. Although the Court has not yet ruled on the admissibility of Dufka's report, it has consistently ruled that hearsay evidence is admissible, and such challenges go to the weight of the evidence.

The Court has relied on Rule 89(C) of the Special Court's Rules of Procedure and Evidence, which allows the admission of any relevant evidence. Hearsay evidence is more commonly admissible in international tribunals, where the judges are seen as capable of determining the weight of such evidence. There is, however, a broad exclusionary rule (Rule 95) limiting the admission of evidence that "would bring the administration of justice into serious disrepute."

(3) Command Responsibility. The Prosecution is attempting to link Taylor directly to the crimes committed and show that he was on notice of these crimes. The Defense is challenging both of these propositions. The Court will inevitably address the contours of command responsibility.

(4) Territorial and Temporal Scope of the Indictment. The indictment against Taylor covers the period November 30, 1996, to January 18, 2002. The indictment is limited by the Special Court's mandate to crimes committed in the territory of Sierra Leone.

The Defense challenged the admission of certain testimony and evidence as outside the temporal and geographical scope of the indictment. The Prosecution responded that such evidence speaks to context and background. The Court generally allowed such evidence, but limited the admission of Dufka's testimony relating to cross-border attacks on Guinea to those that occurred before 2002. Although crimes committed outside of Sierra Leone and crimes committed before 1996 provide context and background, crimes committed after 2002 provide no such background and clearly fall outside of the scope of the indictment.

(5) Protected Witnesses. The Court faced difficulties when the Prosecution called its first protected witness to testify in closed session, TF1-371. This witness received protected status in an order on June 14, 2006, from Trial Chamber I in the pending trial against three former leaders of the RUF.

Presiding Judge Doherty noted that the order granting protective status to TF1-371 mandated that testimony of that witness be heard entirely in closed session. Rule 75(F) of the Court's Rules of Procedure and Evidence states that once protective orders have been given, they shall continue in

effect in any other proceedings before the Court. A party seeking to rescind protective measures ordered in the first proceeding must apply to the Trial Chamber seized of the second proceeding. The Court (by majority decision) ruled that having not received a motion to rescind the order, the order shall stand before Trial Chamber II.

After alternating between open and closed sessions, the Court determined that it would hear this witness in closed session. Presiding Judge Doherty ordered that the gallery would be open to the public, but that the witness would be shielded and the public gallery would not receive audio of the proceedings. ICC staff was unable to accommodate this order and barred anyone from entering the public gallery. For the last week, it was difficult to obtain information on the duration of the closed session and was also somewhat surprising that the witness would testify for seven days, given the length of time previous witnesses had testified.